

Message

From: Mack, Sara [mack.sara@epa.gov]
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Ag Daily: EPA reaffirms glyphosate does not cause cancer

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[EcoWatch: EPA Says Glyphosate Does Not Cause Cancer. Other Public Health Groups Disagree](#)

[Fortune: The U.S. EPA Just Gave Bayer a Gift in Its Battle Against Weed Killer Cancer Claims](#)

[The Hill: EPA says weed-killing chemical does not cause cancer, contradicting juries](#)

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Administration

The Denver Post

Greg Sopkin, former Colorado PUC chairman, appointed Environmental Protection Agency regional director

<https://www.denverpost.com/2019/04/30/greg-sopkin-epa-region-8-director/>

Bruce Finley

Posted: 9:00pm, April 30, 2019

Trump administration officials have appointed former Colorado Public Utilities Commission chairman Greg Sopkin as the Environmental Protection Agency's regional chief to oversee agency efforts in six western states.

Sopkin, 54, has been working on energy, environment and telecommunications matters for a private law firm following his PUC service from 2003 to 2007. He'll replace Doug Benevento at the EPA, who has been promoted to a national advisory role.

And he intends to build on Benevento's approach of prioritizing uncontested core air quality and clean-up priorities of the agency, he said Tuesday in an interview with The Denver Post.

"I'm going to focus my attention on the most pressing problems, which are Superfund sites and ozone (air quality standard) attainment, and also to make sure states are doing their own jobs where they have primary authority," Sopkin said.

EPA Administrator Andrew Wheeler is expected to announce the appointment Wednesday morning. Sopkin will oversee environmental protection efforts in Colorado, Utah, Wyoming, South Dakota, North Dakota and Montana.

"Greg's experience in public service and familiarity with the western region make him a great fit to lead the Region 8 office," Wheeler said in a statement sent to The Post. "I look forward to working with Greg to advance the agency's mission and protect human health and the environment for our mountain west residents."

At the PUC, Sopkin favored a pro-market approach, conducting quasi-judicial and quasi-legislative proceedings. He drafted legal decisions, met with state lawmakers and looked into utility service outages. He previously worked as an assistant state attorney general representing the PUC in state and federal court.

Colorado Attorney General Phil Weiser issued a statement praising Sopkin's commitment to public service.

"The protection of our land, air and water depends on sound leadership at the EPA Region 8 office," Weiser said. "Having a Coloradan with a background steeped in law and government administration will be valuable as we take on important issues in the future."

E&E News

Calif. Democrats press admin on border contamination

<https://www.eenews.net/eedaily/stories/1060248067/search?keyword=EPA>

Jeremy Jacobs

Posted: May 1, 2019

Sens. Kamala Harris and Dianne Feinstein and other California Democrats this week pressed EPA and the State Department to address pollution at the U.S.-Mexico border.

In a letter to EPA Administrator Andrew Wheeler, Secretary of State Michael Pompeo and others, the lawmakers requested that they "work together to provide rapid assistance and mitigate the serious environmental and public health concerns" resulting from the pollution.

Sewage, garbage and other pollution frequently flow into Southern California from Mexico, predominantly via the Tijuana River, which snakes across the border to the Tijuana River estuary and eventually the Pacific Ocean.

Millions of gallons of wastewater has flowed into border communities like the coastal city of Imperial Beach, leading to beach closures.

Imperial Beach, other cities and the state of California have sued the government, seeking greater action ([Greenwire](#), March 30, 2018).

The lawmakers specifically pointed to the rupture of a Tijuana sewage collector last December that discharged between 6 million and 7 million gallons of raw waste per day into the Tijuana River. Already, the lawmakers said, Imperial Beach has closed its beach 30 days this year.

In addition to Harris and Feinstein, California Democratic Reps. Juan Vargas, Susan Davis, Mike Levin and Scott Peters signed the [letter](#).

They noted that there are other problems as well, including pollution that travels across the border in the New River, to the east.

EPA administers and provides funds from the U.S.-Mexico Border Water Infrastructure Program, but the lawmakers said more must be done.

"It is critical that your agencies work together to develop a comprehensive plan to address the ongoing pollution issues along the border in Southern California," they wrote.

E&E News

Documents reveal lobbying for Wheeler, Bernhardt

<https://www.eenews.net/eedaily/stories/1060248453/search?keyword=EPA>

Timothy Cama, Kevin Bogardus

Posted: May 1, 2019

New documents show the extent to which industry gave a lobbying boost to EPA Administrator Andrew Wheeler's nomination to lead the agency.

Nearly a dozen interests, ranging from manufacturers to household cleaners as well as environmental groups, reported lobbying this past quarter on Wheeler's Senate confirmation, according to an E&E News review of disclosure reports.

Documents show the push included six business associations, such as Associated Builders and Contractors, the National Association of Realtors and the U.S. Chamber of Commerce, who have battled with the agency in the past.

ABC sent a letter to senators encouraging them to support Wheeler, himself a former lobbyist for energy and environmental interests. The group pointed to the administrator's work on EPA permitting and the proposal to redo the Obama-era Waters of the U.S. rule.

"ABC supported Administrator Wheeler's appointment based on his commitment to common-sense environmental regulation, including an effective environmental permitting process and the proposed new Waters of the United States rule," said Kristen Swearingen, ABC's vice president of legislative and political affairs, in a statement.

The Senate confirmed Wheeler in February on a 52-47 vote, largely along party lines. Sen. Susan Collins (R-Maine) was the lone GOP dissenter.

Kevin Serafino, director of federal government relations and public policy at the Household & Commercial Products Association, said his group backed Wheeler "because we believe his stabilizing leadership as Acting Administrator was a positive influence at the agency, and provided continuity that allowed the agency to focus on its mission of protecting human health and the environment."

The Chamber pushed for Wheeler's confirmation too by sending a letter in January to leaders of the Senate Environment and Public Works Committee, which held a hearing and initial vote on the nomination.

"While serving as EPA's Acting Administrator, Mr. Wheeler has proven to be a steady hand, and has demonstrated effective leadership while advancing regulatory reforms alongside continued strong environmental protections," Neil Bradley, the Chamber's executive vice president, told the senators at the time.

The National Cotton Council said in its disclosure that it signed onto letters supporting Wheeler from agriculture groups and from the American Alliance for Innovation.

FreedomWorks, a conservative group tied to billionaire political activist Charles Koch, disclosed boosting Wheeler's nomination, as well.

The group's activities included designating the roll call as a "key vote," meaning FreedomWorks will include it on its scorecard ranking lawmakers' dedication to "economic freedom."

Greens against Wheeler

Reports show at least three environmental groups, including the Center for Biological Diversity and the League of Conservation Voters, disclosed lobbying this past quarter on the EPA administrator's nomination.

The Environmental Defense Action Fund, the advocacy arm of the Environmental Defense Fund, said it pushed senators to vote no, making Wheeler only the second EPA administrator nominee the group opposed in its 50-year history — after his predecessor Scott Pruitt.

"It is not only outrageous that Wheeler went straight from being a lobbyist for dirty energy interests to a leadership position at the Environmental Protection Agency, but his policies in office have been dangerous to public health and heavily tilted towards the needs of influential industries rather than American families," EDF Action spokesman Keith Gaby said of the group's work opposing Wheeler.

"On chemical safety, climate change, air pollution, and many other issues he stands in opposition to EPA's mission to reduce pollution and protect our health."

David Bernhardt

Wheeler wasn't the only recent Trump nominee to spark a lobbying battle. K Street also came out to fight over David Bernhardt, himself a former lobbyist, in advance of his confirmation last month to be Interior secretary. Some environmental organizations lobbied against both Wheeler and Bernhardt.

Brett Hartl, government affairs director for the Center for Biological Diversity, said they opposed both nominees given their records as deputies at their respective agencies. That opposition lobbying included sign-on letters and action alerts to its members.

"Giving each of them more authority to run their agencies will obviously result in significant harm to the environment," Hartl said.

The League of Conservation Voters sent missives to senators saying they would "strongly consider including" confirmation votes on Wheeler and Bernhardt as part of its influential annual scorecard.

In addition, LCV's government affairs team did outreach to members and their staffs to discuss the nominees' records and urge a vote against them, said LCV spokeswoman Holly Burke.

Records show six environmental groups reported lobbying on Bernhardt's nomination. Others backed Bernhardt, including the National Shooting Sports Foundation.

Mark Oliva, the group's spokesman, said it told its members to reach out to their senators to support the president's pick, and it put the Bernhardt vote on its legislative scorecard.

"These communications were based on several factors, including Secretary Bernhardt's record and previous service in the department and his commitment to ensuring public land access to sportsmen and women," Oliva said.

"NSSF also considered his focus on conservation issues that are a priority for hunters to perpetuate sustainable and healthy wildlife in the United States and return threatened and endangered species to healthy population levels."

The White House formally nominated Bernhardt to lead Interior in March, and he was confirmed last month. More interests may report lobbying on his nomination given his confirmation vote happened after the first-quarter reporting deadline.

The Southern Ute Indian Tribe sent letters supporting Bernhardt for Interior secretary to both of Colorado's senators.

"They have worked with David. They like him. They think he is extremely well-qualified," said Paul Moorehead, a principal at Powers Pyles Sutter & Verville PC who lobbies on the tribe's behalf. "It is a good relationship, and they think he is going to do a good job."

Greens against Bernhardt

On the other side were groups like the Natural Resources Defense Council, Earthjustice and Global Witness, an international environmental organization. NRDC said it "actively" opposed Bernhardt's confirmation.

"His track record as deputy secretary alone — not to mention all the years he has advocated on behalf of polluters — makes him wholly unfit to lead the Interior and to be the nation's top steward of public lands and wildlife," said Nora Apter, legislative advocate for government affairs at NRDC.

Global Witness' activities included a 14-page document alleging Bernhardt misled the Senate Energy and Natural Resources Committee when asked, during the 2017 hearing on his nomination to be deputy secretary, if he had lobbied for Access Industries Inc., a company owned by Soviet-born oligarch Leonard Blavatnik.

Marjorie Mulhall, legislative director for lands, wildlife and oceans at Earthjustice, said the environmental group joined a wide coalition of conservation and public interest groups to oppose the nomination.

"During his time at Interior, he has been a key driver of undoing protections for our water, our land and our wildlife," Mulhall said. "His policies are widely out of step with the public's interest in conserving our natural resources."

Leverage for their issues

Other interests saw the nomination battles over Wheeler and Bernhardt as a chance to highlight with lawmakers their policy concerns before EPA and Interior.

The National Audubon Society reported lobbying on Bernhardt's nomination. The group said it didn't oppose the now-Interior secretary but sought to "educate" senators about actions he has been involved in, including the 2017 memo declaring that "incidentally" harming birds does not violate the Migratory Bird Treaty Act.

"Audubon believes the Interior Department's December 2017 opinion that the Act no longer applies to industrial hazards like oil pits and power lines is misguided," Sarah Greenberger, Audubon's senior vice president for conservation policy, said in a statement.

The American Coalition for Ethanol saw an opportunity with Wheeler's nomination — push senators to have the EPA nominee weigh in on biofuel issues when he needed their votes.

"We didn't take a position on Wheeler," said Brian Jennings, CEO of the group.

"We urged Senators, particularly GOP Senators, to get assurances from Wheeler regarding the [Reid vapor pressure]/E15 rule and no more blanket Small Refinery Exemptions under the [renewable fuel standard], before voting to confirm him because that would be their strongest point of leverage."

E&E News

Legislation would set PFAS drinking water limit

<https://www.eenews.net/eenewspm/stories/1060247803/search?keyword=EPA>

Ariana Figueroa, George Cahlink

Posted: April 30, 2019

A group of lawmakers is pushing bipartisan legislation to require EPA to set enforceable standards for toxic chemicals in drinking water.

Those chemicals are per- and polyfluoroalkyl substances, known as PFAS, which are found in nonstick household products, shoes and military firefighting foam.

The bill, H.R. 2377, sponsored by Rep. Brendan Boyle (D-Pa.), follows a slew of legislation seeking to address PFAS — from funding research to providing medical resources for people exposed.

Co-sponsor Dan Kildee (D-Mich.), who has been deeply active on the issue, said he and House Speaker Nancy Pelosi (D-Calif.) have talked about possibly including the bill in a spending package.

"I don't discount the possibility of being able to move this and some other PFAS legislation," Kildee said, adding that he's "talked to the speaker about it and she's very open to it."

Kildee said he's hoping to get some type of PFAS legislation passed this year, but for now he's focusing on increasing the amount of money allocated for cleaning up areas where PFAS is found in drinking water.

"President Trump's Environmental Protection Agency is entrusted with keeping our drinking water safe but has delayed protecting our families from toxic PFAS chemicals in drinking water," Kildee said in a statement. "We know that PFAS chemicals are harmful to human health and families deserve safe water from their taps."

Other co-sponsors include Rep. Frank Pallone (D-N.J.), who chairs the Energy and Commerce Committee; Rep. Paul Tonko (D-N.Y.), who chairs the Environment Subcommittee; and Rep. Brian Fitzpatrick (R-Pa.).

People in Fitzpatrick's district are having to "take drastic action" to reduce their exposure to two of the best-known PFAS — PFOA and PFOS — the lawmaker said in a statement today.

"PFAS chemical contamination is a public health crisis and the EPA must act with an urgency that matches the scale of the problem," Fitzpatrick said. "If the EPA won't act, then Congress must take action to protect American communities from these dangerous chemicals."

Other PFAS legislation includes designating the chemical as a hazardous substance and establishing a registry for people exposed to PFAS because of their proximity to a military base.

A Government Accountability Office report found the Defense Department "identified 401 active or closed military installations with known or suspected releases of PFOS or PFOA."

The only PFAS bill without bipartisan support — S. 1023 and its companion H.R. 2102 — would provide hospital care and medical services to veterans and their dependents who were stationed at a military base where they were exposed to PFAS.

Union of Concerned Scientists

EPA's Plan to Ignore Co-Benefits will Cost American Lives

<https://blog.ucsusa.org/derrick-jackson/epas-plan-to-ignore-co-benefits-will-cost-american-lives>

Derrick Jackson

Posted: 3:40pm, April 30, 2019

People who can afford to live in their most-desired neighborhood often select it for the primary reasons of convenience, cleanliness, and quiet. Those features come with what environmental scientists call social, economic, and environmental “co-benefits.”

For instance, streets lined with trees are associated with less crime, more neighborly socialization and child play, lower air conditioning bills in summer heat and less runoff problems in heavy rain. Other major co-benefits involve pollution. Besides trees, which also absorb carbon dioxide and release oxygen, such neighborhoods have drinkable water and playable soil. They do not abut roaring interstates, refineries, chemical factories, fracking operations or facilities with dust clouds swirling off mountains of scrap metal, ores or ash to aggravate the lungs of children with chronic asthma or rob young brains of IQ with neurotoxins.

The concept of co-benefits has moved center stage over the last two decades as scientists realize that nearly all the pollutants from burning fossil fuels can severely damage human health. Those pollutants include black carbon, methane, ozone, sulfur, carbon monoxide and non-methane hydrocarbons. The Intergovernmental Panel on Climate Change said in its 2014 report that the inhalation of the pollutants related to climate change is responsible for 7 percent of the global burden of disease and nearly 8 percent of potential life years lost.

Since then, the World Health Organization has estimated that 4.2 million people a year die from ambient outdoor pollution through heart disease, stroke, lung cancer, chronic obstructive pulmonary disease and acute respiratory infection. Outdoor and indoor pollution from poorly ventilated fuel burning in developing countries kills roughly 7 million people a year.

These dramatic figures appear to be of no concern to the Trump administration. In one of its most cynical schemes yet, the Environmental Protection Agency is currently on a mission to eliminate the co-benefits the Obama administration used to calculate the level of “appropriate and necessary” protections for air and water. Erasing the benefits that come from a clean environment allows industry to claim its toxic plumes, discharges and waste piles are nowhere as harmful as scientists have found, and thus, they need not be forced to spend money to contain them.

With the nation’s air quality deteriorating, according to the 2019 “State of the Air” report by the American Lung Association, this is no time to forget the co-benefits of controlling pollution for both the climate and human health. The science is as clear as ever that the many of the emissions contributing to a perilous future for the world’s climate are also a matter of life and death right now.

The fight over mercury

At the center of the Trump administration’s attack are rules implemented during the Obama administration called the Mercury Air Toxics Standard, or MATS. Mercury, a pollutant from coal-fired power plants, is a neurotoxin that can move in the atmosphere for hundreds of miles before falling back to earth. It can travel up the food chain in forests, rivers, and lakes until it poisons fish-eating birds such as loons and people who consume contaminated fish. Mercury exposure can cause cognitive loss and behavioral changes, damaging humans’ nervous systems and endangering wildlife as well.

The Obama administration created the new mercury standards in 2011 as part of its efforts to address the multiple related dangers of coal burning. Power plants spew far more than mercury into the environment, including particulates, arsenic, chromium, nickel and acid gases.

Back then, the EPA estimated that it would cost industry up to \$9.6 billion to comply with the standards. But, importantly, the agency concluded that its rules to cover the broad range of emissions were “appropriate and necessary,” because the estimated annual health benefits would range *from \$37 billion to \$90 billion*. It calculated that the standards could prevent up to 11,000 premature deaths, 4,700 heart attacks and 130,000 asthma attacks every year, resulting in up to 5,700 less emergency room visits a year and 540,000 less sick days at work annually.

Then there is the co-benefit of less-harmed brains. In the Europe Union for instance, researchers found in 2013 that 1.8 million children were born every year with excess mercury exposure. They calculated that, removing that

exposure would reduce brain damage and increase aggregate IQ scores by more than 600,000 points, translating into an economic benefit of nearly \$12 billion a year.

Some of the same researchers did a similar estimate for the United States, finding that stricter mercury regulations could increase aggregate IQ scores by some 264,000 points a year, with a corresponding annual economic benefit of \$5 billion.

Common economic sense and basic humanity on health would seem to demand that we take such immense benefits and co-benefits into account. As law professor Cary Coglianese, director of the University of Pennsylvania's Program on Regulation put it, "There is a risk any time regulators overlook all the effects of their actions, whether on the benefits side or the costs side of the equation."

And make no mistake. Industry does its best to conjure up "co-costs" when it fights regulations. For instance, one reason that asbestos is still used today in car brakes and building construction is because the industry successfully argued in 1991 that the EPA did not fairly factor in the costs to industry and the safety of substitute materials either in brakes or for workers. But the actual cost to Americans for industry's sleight of hand on asbestos has proven enormous. A 2018 study found that some 39,275 asbestos-related deaths in the United States in 2016—more than double previous estimates, and more than the number of Americans killed by gun violence.

Sadly, industry does not have to worry about the current EPA undercounting its co-costs with Administrator Andrew Wheeler, a former coal lobbyist, running the show. The Trump EPA takes no issue with the Obama administration's estimate of \$9.6 billion in annual costs to industry. But Wheeler wants to throw the MATS co-benefits into the incinerator. Under his direction, the EPA is pushing to revise the standards so the agency is obligated only to consider the most direct effects of mercury contamination, such as the effect on children who eat recreationally caught freshwater fish, which they calculate as costing only somewhere between \$4 million and \$6 million.

Wheeler's EPA is silent, meanwhile, on the fact that more than 90 percent of mercury intake by Americans actually comes via consumption of fish from the ocean. While marine fish indeed can come from all over the world, a 2017 review by university researchers from Harvard, Syracuse, Michigan, Connecticut, Washington and the Biodiversity Research Institute in Maine (BRI) has done extensive research to map the toxic trail of mercury, finding "marked decreases in mercury in Atlantic coastal fisheries in response to decreases in mercury emissions."

Despite the international body of work quantifying the economic impact of brains damaged by mercury and a 2017 review in the International Journal of Environmental Research and Public Health that concluded, "recent studies suggest that chronic exposure, even to low-concentration levels of mercury, can cause cardiovascular, reproductive, and developmental toxicity, neurotoxicity, nephrotoxicity, immunotoxicity, and carcinogenicity," a

December memorandum from Wheeler's office claimed "it was not possible to quantify the estimated value" of those

harms. And, as for the research by BRI to map the toxic trail of mercury in marine fish, the EPA now contends that, “more research is required to link these ecological effects to ecosystem services.”

In a crowning shame, the EPA memo utterly dismisses the other by-products of coal plants and thus the possible co-benefits of controlling them, such as particulates, ozone-related effects, arsenic, benzene, cadmium, chlorine, formaldehyde, lead, manganese, nickel and selenium, citing “data gaps, model capabilities and scientific uncertainty.” This is despite the well-established neurological and carcinogenic dangers of several of these heavy metals, and the plethora of environmental justice campaigns all over the United States to get rid of them.

Ignoring the science

It is hard to overstate the damage the Trump administration’s proposal on co-benefits could ultimately cause if it is widely implemented. For instance, Sir Andy Haines, an expert on the connection between climate change and pollution at the London School of Hygiene and Tropical Medicine, wrote in a [2017 commentary](#) in the *Lancet* that clean energy policies to hold planetary temperature rise to 2 degrees Celsius could save a total of 175,000 American lives from pollution by 2030 and 22,000 lives per year thereafter.

Haines cited a [2012 study](#) published in the *Journal Science* involving scientists from the EPA, NASA and the Scripps Institute of Oceanography which found that climate policies designed to reduce short-lived fine particulate, especially black carbon from incomplete combustion, could also prevent up to 4.7 million premature deaths from air pollution. As Haines put it: “In an era when powerful interests seek to cast doubt on climate change science, major ancillary near-term benefits (co-benefits) of climate action provide added justification for policies to cut greenhouse gas emissions.” These emerging projections clearly have the fossil fuel industry in a frenetic race against the facts. Of the [\\$2 billion](#) spent on climate change lobbying from 2000 to 2016, fossil fuel companies and industries dependent on oil and gas [outspent](#) the renewable energy lobby and environmental groups 10 to 1.

Beyond mercury: The threat to federal water protections

Notably, as enormous as the implications are from ignoring co-benefits related to global warming emissions and air pollution, the Trump administration is also trying to turn cost-benefit on its head for water pollution as well. The most obvious example is the [attempted rollback](#) of the Waters of the US Rule. In this arena, the Trump administration is trying to make the nation’s wetlands seem relatively worthless (thereby effectively allowing more industrial and agricultural pollution) by not considering the benefits and co-benefits these waterways offer.

The reality, of course, is that wetlands offer enormous benefits and co-benefits. They store water in drought, they absorb fertilizer and erosion runoff and provide nurseries for wildlife. Obama’s EPA said compliance costs of up to \$476 million a year were outweighed by benefits up to \$572 million a year. New York University School of Law’s Institute for Policy Integrity [now estimates](#) the benefits of wetlands to range between \$612 million to \$1 billion.

But, while under Wheeler's direction, the Trump EPA conveniently left the Obama EPA's compliance costs intact, it cut out consideration of wetlands to claim the nation would get back only up \$73 million in annual benefits.

Trump wants to roll back water protections despite the fact that, in the United States, nearly a half of rivers and streams, a third of wetlands and a fifth of lakes are in "poor biological condition." Last year, researchers from the University California Irvine and Columbia University found that in 2015, 21 million people drank water from sources that violated health-based water standards. In no surprise, given the iconic tragedy of lead contamination in Flint, Michigan, the study found gaps in compliance for water systems serving the rural poor and low-income communities of color. The study said that generally, Americans can count on clean water, but enough water systems still fall out of compliance to give Americans more than 16 million cases of acute gastroenteritis every year, leading the researchers to write, "Currently, state enforcement agencies lack a systematic procedure to select systems for additional inspection and monitoring."

A deadly calculation

All the talk of aggregate deaths and dollar amounts doesn't adequately bring the issue home. On behalf of UCS and *The American Prospect* magazine, I've reported on a neighborhood in southeast Chicago that, with the help of dedicated scientists in the regional EPA, successfully protested against local mountains of petcoke from oil refining that blackened homes and smothered lungs with dust. Although the petcoke mountains were removed, dangerous levels of manganese and lead were respectively discovered blowing in the air and in the yards of residents.

Simply put, any industry that spews multiple sources of toxic emissions should be held accountable for all of them. And yet, the Trump administration is moving in the opposite direction, leaving many scientists and close watchers alarmed that mercury is a Trojan Horse for a concerted effort to ignore the benefits of pollution control across all industries.

For instance, the Trump administration admitted last year that its attempt to kill the Obama-era Clean Power Plan would cost American lives. The EPA under President Obama estimated that the plan to curtail carbon pollution, including particulates, would save up to 3,600 lives a year and prevent 1,700 heart attacks and 90,000 asthma attacks. For \$8.4 billion of annual compliance costs, the nation would experience the nation would experience health benefits worth up to \$54 billion by 2030.

Even the Trump administration's own figures admitted its plan to relax regulations would release so much more particulate matter into the air that up to 1,400 more Americans would die prematurely and there would be 15,000 more cases of respiratory diseases. The administration also seeks to rollback Obama-era clean air standards for vehicles and block states such as California from setting their own pollution standards. In Obama-era estimates that are still available on the EPA web site, stricter standards for cars, trucks, construction and agricultural equipment and rail and marine

engines could save nearly 40,000 lives a year in 2030. For \$15 billion of compliance costs, the nation would receive nearly \$300 billion (20 times more) in monetized benefits according to this analysis of the co-benefits.

In an era when state pollution protections are notoriously spotty, the federal Environmental Protection Agency ought to fulfill its role as the chief environmental inspector and protector the nation can count on. Instead, at every turn, the Trump administration's EPA is now seeking to deny the scientifically established benefits and co-benefits of cleaner air and water. This is no theoretical exercise. Even by the Trump administration's own accounting in the case of the Clean Power Plan, these changes will cost American lives.

In environmental justice circles, neighborhoods that abut toxic industries are sometimes dubbed "sacrifice zones." In its effort to erase the concept of co-benefits from the American conscience, the Trump administration is making the entire nation a sacrifice zone.

Varsity

Extinction Rebellion protests EPA head Andrew Wheeler's appearance at the Union

<https://www.varsity.co.uk/news/17462>

Charlotte Lillywhite & Maia Davies

Posted: 7:38pm UK time, May 1, 2019

This evening, Extinction Rebellion protested the appearance of Andrew Wheeler, the head of the US Environmental Protection Agency (EPA), at the Cambridge Union.

Toward the end of Wheeler's speech, five members of Extinction Rebellion Cambridge stood up with fake blood on their hands in protest of the former coal lobbyist's role in the Trump administration's rollback of environmental regulations.

Although members of the audience turned and took photos of the protestors, Wheeler continued with his speech. He did not once acknowledge the protestors nor pause, even as they were willingly escorted from the debating chamber by security.

Members of Extinction Rebellion Cambridge also stood outside the Union, holding images of people facing the effects of climate change and playing loud music which reverberated into the chamber.

After the talk, members of Extinction Rebellion blocked exits to the Union and blocked Wheeler's car from exiting the premises.

Audience members strained to hear Wheeler's comments as he was pressed by the Union's Speakers' Officer on climate change. The Speakers' Officer posed hard-hitting questions to Wheeler, quoting Trump's 2015 tweet in which he called for "a big fat dose of global warming" in response to the cold weather.

On Trump, Wheeler said: "When I brief Trump I'm very impressed by the level of details he knows on many subjects".

One audience member, who accused Wheeler of 'ecocide' and 'nepocide', asked him how he sleeps at night.

Wheeler responded: "I sleep on my left side and usually wake up on my back."

Attempting to make light of the situation, an audience member asked whether the Union always had such loud music playing during their speaker events.

During his opening speech, Wheeler noted that he was glad the Union had invited him to speak in what he deemed to be an age of declining free speech. The Union tonight saw a heavy security presence following threats of such a protest from the environmental justice group.

Wheeler became the 15th Administrator of the EPA earlier this year. In his confirmation hearing, Wheeler referred to the US as the "gold standard for environmental progress". According to *The Guardian*, Wheeler was at the time working on rollbacks and regulations that would benefit coal companies.

In a recent interview with the *Financial Times*, the former coal lobbyist stated that there was a "definite possibility" that some US coal mines could be reopened, and questioned the two degrees celsius figure that scientists hold as crucial for limiting the worst impacts of global warming: "How do we know that's the tipping point?"

A spokesperson for Extinction Rebellion told *Varsity* that, as Administrator of the EPA, Wheeler poses "is complicit in climate breakdown".

"Wheeler's EPA has begun dismantling rules that protect the air we breathe, the water we drink and the soil that feeds us". They also added that, as lobbyist for Murray Energy, Wheeler was paid more than \$3 million "to lobby against climate regulation".

"People such as Andrew Wheeler [...] will never be welcome in our city."

The Cambridge Union has been contacted for comment.

In December, a *New York Times* analysis based on research from Harvard Law School, Columbia Law School and other sources counted 78 environmental rules that had at the time either been reversed or were in the process of reversal under US President Donald Trump's administration.

Among the rollbacks already completed were cancelling a requirement for oil and gas companies to report methane emissions and revoking a directive for federal agencies to minimise impacts on water, wildlife, land and other natural resources when approving development projects.

Speaking about the protest, a spokesperson for Extinction Rebellion told *Varsity*: "We'll have the same message for his boss Donald Trump, in London in June".

Asbestos

Bloomberg Environment

EPA Nixes Request by Attorneys General to Gather Asbestos Data

<https://news.bloombergenvironment.com/environment-and-energy/epa-nixes-request-by-attorneys-general-to-gather-asbestos-data>

Pat Rizzuto

Posted: 6:40pm, April 30, 2019

- EPA denies AGs' petition to require asbestos import, use data reporting
- Agency says it has all the information it needs to evaluate risks of deadly fibers

The EPA won't require companies importing asbestos or asbestos-containing products to report that information, the agency told a group of attorneys general April 30.

The Environmental Protection Agency has all the information it needs to decide whether ongoing uses of the mineral and products made with it pose an unreasonable risk to public health or the environment, the agency said in a notice detailing its reasons for denying a rulemaking request 15 attorneys general submitted Jan. 31.

A risk assessment the EPA is conducting of asbestos should be finished by mid-2020, and any decision about whether regulatory controls are needed would follow.

The agency also issued a final significant new use rule April 17 that expanded its oversight of products that no longer contain asbestos, but could, the EPA said.

"I am deeply disappointed, but not at all surprised, by the EPA denial of the AG's petition," said Linda Reinstein, president of the Asbestos Disease Awareness Organization. "For now, litigation and legislation are our only courses of action."

Fifteen AGs' Petition

Attorneys general representing California, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia had petitioned the EPA to issue a data-collection rule to collect information about the imports of asbestos and products made with it.

That information is needed so the EPA and states can protect health, the AGs said.

It would also help the public avoid potentially dangerous exposures to asbestos-containing products, they said.

The California and Massachusetts attorney general's offices couldn't immediately be reached for comment.

Asbestos Imports

The U.S. Geological Survey estimated a specific type of chemical manufacturer—which uses asbestos to make chlorine and caustic soda—imported 750 tons of the mineral in 2018.

Three companies—Occidental Chemical Corp., Olin Corp., and Westlake Chemical Corp.—are known to import asbestos into the U.S., according to information the EPA has released as it evaluates some of its health risks.

"In addition to asbestos minerals, an unknown quantity of asbestos was imported within manufactured products, including asbestos-containing brake materials, rubber sheets for gaskets, tile, wallpaper, and potentially asbestos-cement pipe and knitted fabrics," the Geological Survey said.

Asbestos exposure is the sole known cause of mesothelioma, a rare and deadly cancer of the chest or abdominal lining caused by exposure to asbestos fibers.

Better information about asbestos imports and use could offer insight into the 16,420 people who were newly diagnosed with mesothelioma between 2011 and 2015, the attorneys general told the EPA in their petition.

Of those people, 12,837 died, they said, citing information from the Centers for Disease Control and Prevention.

Lawmakers frequently cited asbestos—specifically the EPA's inability to ban it under the original 1976 Toxic Substances Control Act—as a reason for overhauling the law in 2016.

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E&E News

EPA rejects another petition to beef up asbestos reporting

<https://www.eenews.net/greenwire/stories/1060253021/search?keyword=EPA>

Ariana Figureroa

Posted: May 1, 2019

EPA for the second time has denied a petition that aimed to increase asbestos reporting requirements, this time from more than a dozen attorneys general.

The petition requested that EPA keep a record of manufacturers that import products made from asbestos or containing the mineral.

"Without a new rule requiring adequate reporting regarding the manufacture and use of asbestos, EPA will be unable to comply with its statutory mandate to prevent unreasonable risks to health and the environment presented by this highly hazardous chemical that unfortunately continues to be in widespread use in the United States and poses ongoing dangers to the residents of our states," the 15 Democratic attorneys general wrote to EPA Administrator Andrew Wheeler.

Alexandra Dunn, EPA's assistant administrator for chemical safety, yesterday denied the petition and said the agency would not initiate rulemaking on asbestos reporting.

Dunn said that EPA already has the information the attorneys general requested and that it would publish its full reasoning for denying the request in the *Federal Register*.

"EPA believes that the agency is aware of all ongoing used of asbestos and already has the essential information that EPA would receive if EPA were to grant the petition," she wrote.

California Attorney General Xavier Becerra (D), who signed on to the petition, said he was not surprised EPA denied the request.

"The EPA has once again failed to do its job," Becerra said in a statement. "Asbestos is among the most dangerous chemicals known to humankind."

Asbestos was once widely used in building materials in the United States because of its strength and resistance to fire. But EPA in 1989 banned its use in new materials because of its public health threat. As they break down, thin asbestos fibers can get stuck deep in people's lungs, where they can cause scarring, inflammation and lung cancer.

The attorneys general have 60 days to respond if they plan to challenge EPA's decision in court.

The other attorneys general who signed off on the Jan. 31 petition represent Massachusetts, Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia.

EPA late last year denied a nearly identical petition from health advocates ([*Greenwire*](#), Feb. 12). One of those groups, the Asbestos Disease Awareness Organization, is moving forward with litigation.

"This is what we've come to expect from Trump's EPA," Linda Reinstein, the group's president, said of EPA's denial of the latest petition.

Emissions/Fuel

Agri-Pulse

New issues emerge from familiar topic as EPA closes E15, RIN market comment period

<https://www.agri-pulse.com/articles/12142-new-issues-emerge-from-familiar-topic-as-epa-closes-e15-comment-period>

Spencer Chase

Posted: 6:31am, May 1, 2019

The window for public input on reforms to the nation's biofuel policy has closed, giving the Environmental Protection Agency a limited window of time to finalize changes before a June 1 deadline.

The changes — allowing the summer sale of E15 and tweaking the biofuel mandate credit system — have been hotly debated for years, leaving little confusion about where the various stakeholders stand on the broader points.

"A lot of people have been very vocal about this for some time, so there probably won't be that many surprises in the final formal comments that are submitted," Growth Energy CEO Emily Skor told *Agri-Pulse*. She said the group has tried to be consistent in its prior conversations with EPA so "they can anticipate what it is that we'll be filing."

That level of consistency — something others will undoubtedly share in their submissions — could also speed up the finalization, Skor said. But that doesn't mean the language is without its complexities.

The proposed language to reform the Renewable Identification Numbers (RINs) market is rife with issues, according to both oil and biofuel groups. Both Skor and Frank Macchiarola with the American Petroleum Institute pointed out a lack of EPA justification for the moves.

"We recognize that there's volatility in the marketplace, but volatility is not problematic in and of itself," Macchiarola told reporters last week. "In general," he said, the RIN market status quo works for API.

But merchant refiners beg to differ. They say the cost of Renewable Fuel Standard compliance weighs heavy on their operations. In general, there are two ways to demonstrate that compliance: blend biofuels into gasoline or diesel to generate a RIN certificate, or purchase RINs from an integrated facility with certificates to spare. Merchant refiners typically fall in the latter category, which they say leaves them at the mercy of unpredictable market fluctuations.

PBF Energy, a merchant refiner with five refineries in its portfolio, said the RIN market is "currently rife with manipulation" and "wild volatility."

“Extensive volatility across most RIN categories — often resulting in hundreds of percent swings over very short intervals — that occurs in periods of time when there is no significant impending regulatory action or market event provides even more proof of uneconomic, manipulative trading,” the company notes in its [comments](#).

Those refiners also have enlisted the expertise of Susan Ervin, a former Commodity Futures Trading Commission senior counsel who acted as a consultant for Valero to study the RINs market. In a [letter](#) to EPA Administrator Andrew Wheeler, she said RINs are generally “five to ten times more volatile than similar energy commodities such as oil, ethanol, and natural gas futures.”

While the RIN proposals have proved to be a battleground of their own, a provision of the E15 language has also popped up as a potential red flag on the biofuels side.

Currently, blender pumps mix together E85 and E10 to produce E15, but technical language in the proposal would add a litany of additional compliance complexities for blender pumps and **blur** the area between fuel retailer and fuel manufacturer for stations using the pumps.

In their comments, the Renewable Fuels Association and Growth Energy call on EPA to instead adopt 2016 regulatory language. Then, RFA notes EPA “correctly recognized that the existing regulatory regime for a ‘fuel manufacturer,’ which was promulgated before the rise in blender pumps, is unwieldy and outdated as applied to blender pumps.”

Speaking to reporters Tuesday morning, Sen. Chuck Grassley, R-Iowa, said that language had the potential to negate many of the gains the ethanol industry might experience from EPA approving the E15 waiver.

“It’s going to cut about 50 percent of the potential use of ethanol out,” Grassley said. “Just think how ridiculous it is — now I want to say, very, very ridiculous — to say that a filling station that has a blender pump is a blender. Now that’s just stupid. That doesn’t meet the common sense test.

“There’s surely gotta be people in EPA that are smarter than that. It’s just ridiculous. That’s got to come out,” he added.

EPA has until June 1 to finalize the regulation if it plans to allow E15 to be sold this summer. Last week, Macchiarola confirmed that such an action would be met with a legal challenge, but an injunction would have to be granted to stop the sale of the fuel if EPA wraps up its regulatory process in time.

Bloomberg Environment

Wine Country Airplane Emissions Subject to Possible EPA Suit

<https://news.bloombergenvironment.com/environment-and-energy/wine-country-airplane-emissions-subject-to-possible-epa-suit>

Emily Dooley

Posted: 9:10pm, April 30, 2019

- Groups say EPA failed to set air quality standards for lead emissions in northern Sonoma County
- Air district say airports in area are tiny and have minimal traffic

Two environmental groups plan to sue the EPA for failing to set air standards for lead emissions from small airplanes in California’s wine country.

The Center for Biological Diversity and Center for Environmental Health sent a letter to Environmental Protection Agency Administrator Andrew Wheeler April 30 saying they plan to sue over “permitting deficiencies.”

They say the EPA should have stepped in after California failed to address the issue in the Northern Sonoma County Air Pollution Control District.

“There’s no excuse for allowing small planes to continue to poison Sonoma County’s air,” Center for Biological Diversity Attorney Robert Ukeiley said in a news release. “The EPA needs to take immediate steps to reduce the dangerous threats posed by toxic lead.”

The groups cited definitions and source review provisions as the issue. The notice of intent to sue said the district is home to several local airports with small piston-engine airplanes that use aviation gas, which contains lead. Experts say there is no safe exposure level to lead.

Issues ‘Long Put to Bed’?

Rob Bamford, an air pollution control officer with Northern Sonoma County Air Pollution Control District, said the rules cited by the groups have been changed and approved by the EPA. A federal register notice about the updates to rules governing the district was published in July 2018.

“It was long put to bed,” Bamford said.

EPA didn’t immediately respond to a request for comment.

The federal agency has authority to set air quality standards for common air pollutants if a state hasn’t submitted a plan or it is inadequate, according to the EPA website. It has set 11 Federal Implementation Plans nationwide.

Alex Saschin, an air quality engineer with the Northern Sonoma County Air Pollution Control District, said his agency lacks authority to regulate airplane emissions, which fall under the EPA’s purview. The agency instead sets guidelines for stationary air pollution sources like refineries and rock crushing.

The airports cited in the letter “are really tiny,” Saschin said. “There’s one plane going out of these once a day.”

Chicago Tribune

State: Developer of unfinished Waukegan subdivision violated EPA permit, pollution laws

<https://www.chicagotribune.com/suburbs/lake-county-news-sun/news/ct-ins-waukegan-river-glen-lawsuit-st-0425-story.html>

Emily Coleman

Posted: 11:00am, May 1, 2019

The never-finished River Glen residential subdivision off Route 120 in Waukegan is the center of a lawsuit filed by the Illinois Attorney General’s Office alleging that the subdivision’s developers violated state pollution laws.

The lawsuit is the latest in a series of setbacks for the development.

Only six single-family houses, including a model home, have been built at what was approved as a 65-home development east of the River Road corridor, city officials have said. The homes at the site are still being powered with propane because a natural gas line was never extended as originally proposed.

First Midwest Bank, which holds the mortgage on the property and is seeking to foreclose on the property, is showing “little interest” right now in completing the development, city attorney Robert Long said. He added city officials think that “likely” once the issues raised in the lawsuit are addressed, the bank will tell the city its plans for the subdivision.

The attorney general’s lawsuit accuses the developer, River Glen Capital Group, of failing to implement the necessary soil erosion controls, allowing sediment to flow into the stormwater sewer system and ultimately into the Des Plaines River, according to the complaint.

The complaint doesn’t allege that there’s anything necessarily problematic in the soil but that the soil itself is the issue, according to the attorney general’s office. Developers are required to obtain permits that regulate how soil is disturbed and erosion managed during construction projects to keep the soil from getting into waterways.

River Glen Capital Group has denied that it violated any laws or its Illinois Environmental Protection Agency-issued permit, according to its answer to the complaint filed in Lake County Court.

The development group no longer owns the 22-acre property at Route 120 and River Road, its attorney Thomas Hood said. The firm reached an agreement with First Midwest Bank, the successor to the bank that originally arranged a mortgage with River Glen Capital Group.

Under the agreed order reached in December, First Midwest Bank is free to sell the River Glen property as well as another property foreclosed on, which is the commercial structure that currently houses Timothy O’Toole’s in downtown Libertyville, court records show.

A First Midwest Bank spokeswoman said the foreclosure is pending so she could not comment. She said the bank does not own the property.

The state’s lawsuit asks that River Glen Capital Group be ordered to take the steps necessary to prevent sediment from flowing offsite and bring the property in compliance with its permit. It also seeks civil penalties.

According to Long, the lawsuit has put city efforts to see the neighborhood’s roadways and other work completed on hold.

“We still have immediate concerns with the erosion, but as long as the bank is taking proper steps to address that, (we) won’t interfere with the progress that’s being made in that respect,” Long said in an email Monday.

When the project was initially approved, the city required the developer to take out an insurance policy to guarantee that the main arterial road is built, Long has said. The policy is worth about \$1.9 million, which isn't enough to cover the road's construction.

If the state's efforts can see the drainage improvements completed, that is something the city wouldn't also have to pursue, Long has said.

InsideEPA

D.C. Circuit Wrestles With Venue For Suit On EPA Air Permit Policy Change

<https://insideepa.com/daily-news/dc-circuit-wrestles-venue-suit-epa-air-permit-policy-change>

Stuart Parker

Posted: May 1, 2019

Appellate judges at May 1 oral argument wrestled with which circuit court has jurisdiction to hear environmentalists' suit claiming a major Trump administration shift in Clean Air Act permitting policy barring the agency from "second guessing" states' permit decisions is unlawful, but the judges did not indicate how they might rule.

At argument in *Sierra Club v. EPA, et al.*, U.S. Court of Appeals for the District of Columbia Circuit Judges David Tatel, Judith Rogers and Nina Pillard used all of their questions to probe whether the suit belongs in their court, as environmentalists contend because the decision sets broad national policy, or instead in the 10th Circuit, as EPA argues, because it pertains only to the specific permit at issue governing a Utah power plant.

While the judges pressed Sierra Club and EPA hard on the venue question, it was unclear what their final verdict would be.

Sierra Club filed suit in both circuits over EPA's 2017 decision on a specific Utah air permit that they say reflects a major shift in agency air permitting policy affecting all permit applications nationwide. While the case has already been argued in the D.C. Circuit, the 10th Circuit is yet to name judges to hear that case, which is on hold pending a D.C. Circuit decision on jurisdiction.

Seeking to avoid a D.C. Circuit ruling on EPA's air permitting policy, the agency is trying to limit the applicability of any adverse ruling, which would be nationally binding if issued by the D.C. Circuit whereas a 10th Circuit ruling would only affect the states covered by that court: Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming.

Both suits challenge the alleged broad policy shift contained in EPA's 2017 denial of a petition by Sierra Club to object to the Clean Air Act Title V operating permit of PacifiCorp's Hunter coal-fired power plant in Utah. The group contends that the petition denial goes far beyond a simple, fact-specific adjudication on a single permit, and sets a nationally-binding precedent that amounts to a rulemaking.

The group says EPA's policy unlawfully precludes the agency from objecting to states' decisions on which permits are required for a given source, even if the state permit is deficient or the source skirts new source review (NSR) permit requirements for "major" sources. The policy is therefore nationally applicable and the suit should be heard by the D.C. Circuit, which hears challenges to national rules, Sierra Club says.

But EPA says the Hunter decision is only applicable to the Utah power plant at issue in the litigation, and as such the suit must be heard in the 10th Circuit because the decision is not national

PacifiCorp is intervening in the suit to support EPA, while the state of Utah and the Air Permitting Forum (APF), an industry coalition favoring eased permitting conditions, have submitted *amicus* briefs in favor of the policy established by the *Hunter* petition denial. Utah and APF say venue is proper in the 10th Circuit.

'Scenario Specific'

At argument, Department of Justice attorney David Kaplan, representing EPA, said "this case belongs in the 10th Circuit," and argued that the Hunter order is "scenario specific" and is applicable only to the power plant.

Rogers asked if that is the case, “what about the first 20 pages” of the order, which explain how it alters national policy “going forward.”

Kaplan responded: “The agency has looked to the *Hunter* order as non-binding precedent.”

Pillard pressed Kaplan on whether since the order’s issuance, EPA has objected to any Title V permits where it “looked under the hood” at states’ fundamental permit decisions, in the manner the order bars. When Kaplan failed to give a definitive response, Pillard said “I take it the answer is no.”

Pillard and Tatel appeared to differ on whether the *Hunter* order is “binding,” with Tatel arguing that it is, and Pillard saying it is not.

Tatel questioned how EPA can assert it is “non-binding” in the light of the “going forward” language in the order. Rogers attempted to clarify that the order is “binding for now,” until EPA changes its policy again.

Rogers and Pillard pressed Kaplan on whether “the internal operation of EPA has changed,” another factor that might help decide whether the order is tantamount to a rule and eligible for D.C. Circuit review.

Kaplan said the order sets administrative precedent, but that is “nothing novel” in agency decision making.

In response attorney Keri Powell, representing Sierra Club, said that under D.C. Circuit precedent the order “is definitely binding.”

Powell said the *Hunter* order is “highly unusual,” and it “makes no bones about” changing EPA’s permitting policy “going forward,” for all its regional offices. She argued the order has national implications as a result and therefore should be heard in the D.C. Circuit.

Powell said the *Hunter* order is “fundamentally different than any order” EPA has issued granting or denying petitions for objection to Title V permits, which are “umbrella” permits containing “all applicable” permit requirements, including underlying NSR permits

EPA’s refusal to examine whether states set permit conditions correctly -- including whether “major source” permits are required -- means the agency is violating the air law and redefining what “all applicable requirements” are that Title V permits must contain, she argued. That definition is now established by EPA rule, and the Trump EPA is overturning decades of prior agency practice, Powell said.

Major Source

Sierra Club says that Utah failed to require a tough “major source” NSR permit for the power plant in its original determination in 1997, and EPA should have remedied this in its periodical reviews of the plant’s Title V permit -- but failed to do so. The plant instead operates under a weaker minor source permit.

Under the air law, EPA has 45 days to review and, if necessary, object to Title V permits. Should the agency fail to object, petitioners can ask the agency to object, and if EPA fails to issue a decision within 60 days, petitioners can sue the agency for a response. In the instant case, Sierra Club is suing over EPA’s 2017 final response to the group, because of the negative precedent the Sierra Club says it sets.

EPA has abandoned “a very powerful oversight mechanism” provided by Congress, Powell said, claiming that the new policy is now “the law of the land.”

But Tatel said that while Powell makes a good case, the court is bound by its own and Supreme Court precedent establishing that agency guidance documents, or adjudicative orders, are not binding like rules nor can they amend final regulations. That suggests a potential bar for the suit if the D.C. Circuit agrees it has jurisdiction, because it could potentially reject the case as challenging something that is not a final agency action subject to the court’s review.

Meanwhile, another case testing the doctrine established by the *Hunter* order is ongoing in the 5th Circuit, in *Environmental Integrity Project and Sierra Club v. EPA*. In that suit, EPA is defending its March 2018 rejection of a petition by environmentalists to object to the Title V permit granted by Texas to ExxonMobil’s Baytown, TX, olefins production plant. Environmentalists say that an underlying permit included in the Title V permit is flawed and not federally enforceable, serving to circumvent tougher NSR permit requirements.

InsideEPA

Exxon Faces Test In Bid To Delay Novel Climate Suit For New EPA Permit

<https://insideepa.com/daily-news/exxon-faces-test-bid-delay-novel-climate-suit-new-epa-permit>

Lara Beaven

Posted: May 1, 2019

Oil giant ExxonMobil is facing a key test as it seeks to stay a novel climate change suit to allow EPA to issue a new water permit that the company hopes will address most of the plaintiff's concerns and moot the first-of-its-kind suit, which alleges the company is violating permit terms because it is not doing enough to prevent releases caused by climate impacts.

The company is also battling with EPA over whether the agency's permit writer should be compelled to testify on the permit-writing process.

Over the past few weeks, lawyers for Exxon and the Conservation Law Foundation (CLF) have filed competing briefs in the U.S. District Court for the District of Massachusetts on whether the court should stay the suit to await EPA issuance of a new permit.

Following oral argument earlier this year, Senior Judge Mark L. Wolf rejected the company's motion to dismiss the suit, clearing the way for a first-time trial on whether and how pollution control permits must account for potential climate risks.

Wolf has tentatively set a May 14 hearing date to consider Exxon's request to stay the case.

In an April 5 brief, Exxon asked to halt proceedings on the case in order to allow EPA to issue a revised Clean Water Act (CWA) permit for one of its terminals, saying the new permit will resolve most, if not all, of the disputed issues and would promote uniformity in the CWA discharge permitting regime.

The company says CLF is asking the court to determine whether Exxon should be required to redesign its facilities to protect against allegedly increased risks of flooding and extreme precipitation during the past seven years and into the near future, a request that it says is entirely without precedent, and contrary to the operative National Pollutant Discharge Elimination System (NPDES) permit.

"But because CLF's argument relies on stock phrases common in NPDES permits and their state equivalents, it effectively and improperly seeks a legislative decision, implicating numerous facilities subject to these same conditions. Whether, when, and to what extent permit holders must address such risks are questions properly addressed by EPA," the company says in its recent filing.

Staying the case will aid the court without unduly prejudicing CLF, and the environmental group will be afforded an opportunity to participate in the permitting process, where it may advance the same concerns raised here, Exxon says. But CLF counters in its April 19 response that deferring to EPA under the doctrine of primary jurisdiction is improper in this case for two straightforward reasons.

First, the citizen suit provisions of the CWA and the Resource Conservation and Recovery Act (RCRA), as well as the court's authority, would be circumvented. "As courts have uniformly held, invoking primary jurisdiction in the context of citizen enforcement actions is inappropriate in light of the detailed procedural structure carefully designed by Congress for bringing these suits," CLF says.

Both the CWA and RCRA require a pre-suit waiting period to allow EPA to act, and once that time is expired, the suit can be filed. Further deferral in favor of potential EPA action would be an end-run around the statutory scheme, CLF says.

"Second, the primary task in this case--interpretation of the terms that EPA has written into the Permit for the Everett Terminal--falls squarely within the Court's area of expertise and is not reserved to the special technical expertise of EPA," CLF argues.

Climate Impacts

The terminal's NPDES permit includes both numeric and narrative standards, and the narrative requirements, which are intended to prevent the occurrence of unpermitted discharges, "require Exxon to consider and protect against potential sources of discharges resulting from impacts of climate change," CLF says.

"Exxon's Motion to Stay is merely a delaying tactic, and it does nothing to support staying this case."

The oil company ignores the overwhelming precedent holding that deferral under primary jurisdiction is inappropriate in citizen enforcement cases and is repeating the same arguments Wolf rejected in March when he allowed the case to proceed, CLF says.

"Contrary to Exxon's assertions, CLF brings this citizen suit to enforce the provisions of the operative Permit for the Terminal as written, as well as under RCRA to alleviate the imminent and substantial dangers presented by the current conditions at the Everett Terminal."

Additionally, Exxon has not explained how the pending permit renewal process will resolve the issues in the case. Even if a new permit were issued quickly, there is little reason to conclude that it would resolve the issues regarding the legal interpretation of the current permit's terms, CLF says.

Exxon, in an April 26 reply brief argues that CLF fails to tackle two crucial facts in the case that compel the entry of a stay. First, by the time the case has been fully litigated on the merits, and potentially appealed, EPA says it will have addressed the company's pending permit renewal application for the terminal, which could moot or resolve CLF's claims. "Second, this is not remotely a typical citizen suit. In CLF's own words, it is a 'first-of-its-kind lawsuit' attempting to use boilerplate NPDES permit language as a foothold to legislate alleged climate change preparedness," Exxon says. "Given the novelty of CLF's theory, the technical and policy-laden issues it implicates, and the impact its adoption could have beyond this case, knowing EPA's views before proceeding is all the more crucial."

While the district court may be the first to confront claims that good engineering practices require climate change preparedness, if CLF attains its goals, it will not be the last, Exxon says. "Under the guise of a citizen-enforcement suit, CLF seeks to advance a political agenda in disregard of EPA policy and the agency's interpretation of the NPDES permit CLF ostensibly seeks to enforce."

Because EPA should determine in the first instance questions of whether, when, and to what extent NPDES permit holders like Exxon should address alleged increased risks of extreme weather during the life of a permit, the doctrine of primary jurisdiction supports deference to the agency, the company says.

EPA Testimony

Meanwhile, the company is also sparring with EPA over whether an agency employee can be compelled to testify on the permit writing process.

Exxon subpoenaed EPA Region 1 stormwater program coordinator Thelma Murphy to testify, but EPA has moved to quash the subpoena, noting that neither the United States nor any of its agencies are parties to the case. "EPA determined, in accordance with its regulations, that compliance with the subpoena would not clearly be in the interests of EPA and does not authorize Ms. Murphy's testimony at the hearing," the agency says, adding that the determination binds Murphy and that the court does not have authority to compel her testimony.

"The testimony of Ms. Murphy will be cumulative and duplicative of information EPA previously provided the parties, and the benefit of this duplicative testimony is outweighed by the burden posed by allowing private litigants to subpoena government employees for testimony in private litigation," EPA says.

Exxon says it narrowly limited its subpoena to elicit testimony concerning EPA's processes, which will only underscore that the issues raised in CLF's suit are appropriately decided by EPA in the first instance. While the company believes that EPA's testimony could aid the court in resolving the motion to stay, it says it should prevail on its motion to stay regardless of whether EPA testifies. -- *Lara Beaven* (lbeaven@iwpnews.com)

PoliticoPro

EPA watchdog says OMB stonewalling glider review

<https://subscriber.politicopro.com/article/2019/04/epa-watchdog-says-omb-stonewalling-glider-review-3176000>

Alex Guillen

Posted: 6:32pm, April 30, 2019

The White House Office of Management and Budget has stonewalled an EPA Office of Inspector General probe into the agency's 2017 proposal to repeal an emissions rule for "glider" trucks, the OIG complained in an April 25 letter released today by Senate Democrats.

Acting EPA IG Charles Sheehan wrote to OMB Director Mick Mulvaney that OMB has not replied to questions posed in March following months of back-and-forth.

"I do not accept today's response from OMB that, while 'very supportive of EPA OIG's work,' it declines to support our work due to the supposed deliberative character of the sought information," Sheehan wrote. He warned Mulvaney that if OMB had not replied by Monday, he would alert Congress immediately.

EPA's OIG does not typically get involved in policy matters, but the watchdog agreed to look at a Scott Pruitt-era proposal to repeal the glider truck rule after Senate Democrats alleged that EPA had underestimated its economic impacts to avoid triggering more stringent rulemaking requirements.

But OMB has not yet answered key questions on how the administration determined the proposal's economic significance, Sheehan wrote.

"Such protracted delay constitutes a clear impediment to our audit. It undermines our ability to fully answer the congressional request that led to our audit," he wrote.

An OIG spokesperson confirmed the April 25 letter's authenticity but declined to comment further. OMB did not immediately return a request for comment Tuesday evening.

In a statement, Sens. Tom Carper (D-Del.) and Tom Udall (D-N.M.) called on OMB "to fully cooperate with this investigation."

The glider repeal has not moved forward since it was proposed in November 2017, although Administrator Andrew Wheeler told Congress earlier this year that EPA is working on a new version "that is not predicated on the industry going out of business."

PoliticoPro

Sources Wheeler eyeing partial exemptions under RFS

<https://subscriber.politicopro.com/article/2019/05/sources-wheeler-eyeing-partial-exemptions-under-rfs-3177537>

Eric Wolff

Posted: 11:18am, May 1, 2019

EPA Administrator Andrew Wheeler is considering issuing partial exemptions to small refiners that would relieve them of half their biofuel blending requirements under the Renewable Fuel Standard, according to two refining industry sources.

EPA has received requests from 36 refineries for exemptions from their 2018 blending compliance requirements. Issuing partial waivers rather than the full waivers that EPA has been giving to refiners could offer Wheeler a compromise to try to assuage both the biofuel backers and the oil industry, two of President Donald Trump's core constituencies that have been fighting over the issue, the two sources tell POLITICO.

"Various options are on the table as Wheeler increasingly realizes there is no safe harbor on this or anything else related to RFS," said one of the sources.

Refiners have been awaiting EPA's decision on the 2018 applications, but DOE only just delivered its required recommendations to EPA last week, according to the sources.

EPA declined to comment on whether partial waivers were under consideration.

"No decisions regarding 2018 [Small Refinery Exemptions] have been made," agency spokesperson Michael Abboud said in a statement. "EPA continues to implement the Renewable Fuel Standard program in accordance with the Clean Air

Act, taking into consideration additional direction from Congress, recommendations from Department of Energy, and relevant court decisions.”

Corn and ethanol interests have criticized the RFS exemptions as undermining the RFS by reducing demand for the biofuel by billions of gallons, and that the falling costs of compliance credits have undercut refiners' arguments that costs of meeting the blending requirements is too high.

Glyphosate

Ag Daily

EPA reaffirms glyphosate does not cause cancer

<https://www.agdaily.com/news/epa-glyphosate-no-risk-public-health/>

Staff

Posted: May 1, 2019

The U.S. Environmental Protection Agency is taking an important step in the agency’s review of glyphosate. As part of this action, the EPA continues to find that there are no risks to public health when glyphosate is used in accordance with its current label and that glyphosate is not a carcinogen. The agency’s scientific findings on human health risk are consistent with the conclusions of science reviews by many other countries and other federal agencies .

While the agency did not identify public health risks in the 2017 human health risk assessment, the 2017 ecological assessment did identify ecological risks. To address these risks, EPA is proposing management measures to help farmers target pesticide sprays on the intended pest, protect pollinators, and reduce the problem of weeds becoming resistant to glyphosate.

“EPA has found no risks to public health from the current registered uses of glyphosate,” said EPA Administrator Andrew Wheeler. “Today’s proposed action includes new management measures that will help farmers use glyphosate in the most effective and efficient way possible, including pollinator protections. We look forward to input from farmers and other stakeholders to ensure that the draft management measures are workable, realistic, and effective.”

U.S. Secretary of Agriculture Sonny Perdue said, “USDA applauds EPA’s proposed registration decision as it is science-based and consistent with the findings of other regulatory authorities that glyphosate does not pose a carcinogenic hazard to humans.”

Glyphosate is the most widely used herbicide in U.S. agriculture and has been studied for decades. It is used on more than 100 food crops, including glyphosate-resistant corn, soybean, cotton, canola and sugar beet. Non-agricultural uses include residential areas, aquatic areas, forests, rights of way, ornamentals, and turf.

Once the Federal Register notice publishes, the public will be able to submit comments on EPA’s proposed decision at www.regulations.gov in docket # EPA-HQ-OPP-2009-0361. Public comments will be due 60 days after the date of publication in Federal Register. EPA’s responses to the comments received on the draft ecological and human health risk assessments and the benefits assessment will be in the docket.

For more information about glyphosate, including today’s proposed interim decision and supporting documents, click [here](#).

The glyphosate draft risk assessments and supporting documents can be found [here](#). [Contact the EPA](#) to ask a question, provide feedback, or report a problem.

Bloomberg Environment

New York Approves Ban on Chlorpyrifos Pesticide

<https://news.bloombergenvironment.com/environment-and-energy/new-york-approves-ban-on-chlorpyrifos-pesticide>

Keshia Clukey

Posted: 7:13pm, April 30, 2019

- Bill would phase out the use of the pesticide by the end of 2021
- Farm groups say there are few alternatives, ban would put crops at risk

New York State would phase out and then entirely ban the use of chlorpyrifos by the end of 2021, according to legislation passed April 30.

The bill ([A.2477/S.5343](#)), passed by the state Senate and Assembly as part of a larger environmental package now heads to Gov. Andrew Cuomo's (D) desk for final approval.

Chlorpyrifos has been linked to neurological damage in children and has been banned for home use nationally since 2001. It is one of the most common bug killers and is used on a wide array of crops such as corn, apples, and almonds.

The pesticide is primarily produced by Corteva Agriscience, DowDupont Inc.'s agriculture division. Corteva Agriscience did not immediately respond to a request for comment April 30.

A Cuomo spokesman said the governor's office is reviewing the measure and pointed to his "aggressive environmental agenda."

New York is the second state to pass a ban after Hawaii, which approved a similar measure in June 2018. Other states, including Connecticut and Oregon, have proposed bans, and California has passed a suite of measures taking the pesticide off store shelves in 2015 and only allowing for permitted and licensed applications. California further restricted commercial use in 2018 and said it can only be used on crops where there are few alternatives.

New York's legislation comes after a federal court of appeals April 19 [gave](#) the U.S. Environmental Protection Agency 90 days to decide whether to ban the use of chlorpyrifos on food. Under the Obama administration, the EPA proposed ending all agricultural uses of the pesticide, but didn't make a final decision on the issue. Under the Trump administration, the agency has called for further evaluation of the neurodevelopmental effects of chlorpyrifos.

Farm Groups Concerned

"I think it's important that we make sure that our farm workers, that the food that we eat, and the others who come in contact with chlorpyrifos are no longer poisoned by that chemical," state Sen. Todd Kaminsky (D), chairman of the Senate Environmental Conservation Committee and the bill's Senate sponsor, said in an interview.

Agriculture groups are concerned about the ban's potential impact on New York's large farming industry, particularly on onions and cabbage crops—two of the largest vegetable commodities in the state.

"There aren't many alternatives, if any. It definitely puts the plants more at risk of loss and disease," New York Farm Bureau spokesman Steve Ammerman said in an interview.

The Farm Bureau is also concerned the bill disregards the current pesticide registration process, which requires a review by the EPA and the state Department of Environmental Conservation.

"We are concerned that the legislation is taking this from the scientific realm and putting decisions on crop tools into the political realm," Ammerman said.

Phaseout Planned

The bill provides a phaseout, which gives time for farmers to try different products and for corporations to develop alternatives, Kaminsky said.

It would prohibit the aerial application of the pesticide starting in 2020, and would ban all use of chlorpyrifos except on apple tree trunks by 2021. The chemical would be completely banned by Dec. 1, 2021.

Environmental advocacy groups praised the measure.

"It's another strong standard that will prevent New Yorkers from being exposed to a chemical that we know as dangerous," Environmental Advocates Executive Director Peter Iwanowicz said in an interview.

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EcoWatch

EPA Says Glyphosate Does Not Cause Cancer. Other Public Health Groups Disagree

<https://www.ecowatch.com/epa-glyphosate-cancer-2635997133.html>

Olivia Rosane

Posted: 6:367am, May 1, 2019

The U.S. Environmental Protection Agency (EPA) announced Tuesday that glyphosate, the active ingredient in Monsanto's Roundup weedkiller, does not cause cancer, reaffirming its 2017 finding and contradicting juries who ruled the opposite in two high profile trials, Reuters reported.

In August 2018, a California jury awarded \$289 million to a Bay Area groundskeeper who said that repeated Roundup use caused his non-Hodgkin lymphoma, though that amount was later reduced to \$78 million. A U.S. jury awarded a second California man more than \$80 million in March over a similar claim. But the EPA has not changed its position.

"EPA has found no risks to public health from the current registered uses of glyphosate," EPA Administrator Andrew Wheeler said in a statement.

Environmental groups have cast doubt on the agency's findings, saying they dismiss the conclusions of other public health experts. Just a few weeks ago, the U.S. Department of Health and Human Service's Agency for Toxic Substances and Disease Registry released a toxicology report for glyphosate that acknowledged its health risks, the Natural Resources Defense Council (NRDC) pointed out.

"The EPA's pesticide office is out on a limb here — with Monsanto and Bayer and virtually nobody else," NRDC senior scientist Jennifer Sass said.

The Environmental Working Group (EWG) agreed, pointing to the 2015 conclusion of the World Health Organization's International Agency for Research on Cancer, which ruled it was "probably carcinogenic to humans." EWG also cited a January report published in Environmental Sciences Europe that found the EPA had disregarded independent, peer-reviewed research that showed a link between glyphosate and cancer in favor of Monsanto-funded studies saying it was safe.

"Today's decision by Administrator Wheeler, like virtually every one he and the Trump administration make, completely ignores science in favor of polluters like Bayer," EWG President Ken Cook said. "This move by EPA should not come as a surprise. Under the control of Trump and Wheeler, the agency is virtually incapable of taking steps to protect people from dangerous chemicals like glyphosate."

The @EPA said today the active ingredient in @Bayer-Monsanto's carcinogenic weedkiller, Roundup, is safe. Why are they ignoring a growing body of independent research showing a strong connection between glyphosate and cancer in humans? Learn more here: <https://bit.ly/2WeSqUj>

The EPA's announcement comes at a difficult time for Bayer, which acquired Monsanto last year. The company has lost \$39 billion in market value since the takeover, mostly due to the Roundup trials. At a meeting Friday, more than 55 percent of shareholders voted not to absolve CEO Werner Baumann and other top officials of their responsibility for the handling of the merger, The Star reported.

There are currently 13,400 Roundup lawsuits pending in U.S. courts. Glyphosate was developed by Monsanto for Roundup, but the patent has since expired and other weedkillers can now use the chemical, according to Reuters. Glyphosate is currently the most-used herbicide in the U.S. and is routinely used on more than 100 crops, the EPA said.

Fortune

The U.S. EPA Just Gave Bayer a Gift in Its Battle Against Weed Killer Cancer Claims

<http://fortune.com/2019/05/01/bayer-monsanto-weed-killer-cancer-glyphosate/>

David Meyer

Posted: 9:39am, May 1, 2019

The embattled management at Bayer just got a handy boost from the U.S. Environmental Protection Agency (EPA)—a draft report that says glyphosate, the active ingredient in its Roundup weedkiller, does not cause cancer.

This is no change of stance on the EPA's part, but the timing of the new report should prove beneficial to Bayer, which bought Roundup-maker Monsanto last year and is facing 13,400 claims from people who claim the substance is carcinogenic.

Two juries have already decided that Roundup did cause plaintiffs' cancer, leading to damages—which Bayer is appealing—totaling \$159 million. Amid the verdicts, Bayer's value has plummeted some 40%. More trials will take place this year, and now Bayer's lawyers get to point to the EPA's opinion as backing up their central argument that glyphosate is not carcinogenic.

Glyphosate and cancer

This is no isolated finding. As Secretary of Agriculture Sonny Perdue said in a Tuesday statement, the EPA's proposed interim decision on the substance's safety is "consistent with the findings of other regulatory authorities that glyphosate does not pose a carcinogenic hazard to humans."

However, not all studies have agreed on that point. Notably, the World Health Organization's International Agency for Research on Cancer (IARC) said in a 2015 report that glyphosate was "probably carcinogenic to humans." Unlike regulatory agencies, the IARC looked only at studies that were in the public domain and available for independent scientific review—that meant ignoring industry data that could not be independently verified.

In its proposed decision, the EPA defended its use of industry-funded studies by saying it has "rigorous guidelines for how studies should be conducted" and "independently evaluates required studies for scientific acceptability."

"EPA's cancer evaluation is more robust than IARC's evaluation," the agency claimed, adding that its evaluation was "also more transparent" as its work was open for public comment. By contrast, the IARC's meetings are closed, it does not allow public comment, and its reports are "final without an external peer review," according to the EPA.

As it happens, the EPA is not the only U.S. agency currently seeking public comment on a glyphosate-related report. The Agency for Toxic Substances and Disease Registry also put out a draft report last month noting that, while most studies found no glyphosate-cancer link, "a possible association between exposure to glyphosate and risk of non-Hodgkin's lymphoma could not be ruled out, based on conflicting results."

Interestingly, the EPA draft notes that Bayer and an "unidentified organization" organized separate mass-mail campaigns, including comments from farmers and consumers, urging the agency to "keep glyphosate accessible." On the other hand, environmental groups organized seven mass-mail campaigns, calling on the

EPA to restrict glyphosate's use, reconsider its view on the cancer link, and protect the monarch butterfly—an insect whose population may be threatened by glyphosate use. One of those organizations was unidentified, too.

Shareholder rebuke

Bayer has consistently maintained that glyphosate is safe to use, but its shareholders are freaking out about the massive liabilities it seems to face in the U.S.

On Friday a majority of investors refused to ratify management's actions over the last year, on the basis that they had not properly assessed the financial risk of the \$63 billion Monsanto acquisition. This was unprecedented for a German corporation, where shareholders almost always back management in such votes by more than 90%.

As a result, Bayer's board of management, led by CEO Werner Baumann, is in a precarious position, saved only by two factors: the backing of Bayer's supervisory board, which is led by Baumann mentor Werner Wenning, and the fact that investors are for now loath to introduce more chaos into the equation by bringing in new management.

On Wednesday, Reuters reported that Bayer's supervisory board would in the next few weeks hold an extraordinary meeting to "discuss a crisis of confidence in its leadership."

The Hill

EPA says weed-killing chemical does not cause cancer, contradicting juries

<https://thehill.com/policy/energy-environment/441535-epa-says-weed-killing-chemical-does-not-cause-cancer-despite-jury>

Zack Budryk

Posted: 9:09am, May 1, 2019

The Environmental Protection Agency (EPA) said on Tuesday that a chemical commonly found in weed killers does not cause cancer, contradicting several juries in the U.S.

"EPA has found no risks to public health from the current registered uses of glyphosate," EPA Administrator Andrew Wheeler said in a statement.

"Today's proposed action includes new management measures that will help farmers use glyphosate in the most effective and efficient way possible, including pollinator protections," he added. "We look forward to input from farmers and other stakeholders to ensure that the draft management measures are workable, realistic, and effective."

Glyphosate is the most commonly used herbicide among farmers and is the key ingredient in Bayer's Roundup weed killer.

In its decision, the EPA reaffirmed earlier pronouncements about the chemical's safety, even as Bayer faces thousands of lawsuits from plaintiffs who attribute their cancer to Roundup.

As recently as late March, a federal jury in San Francisco awarded a man \$80 million after determining Roundup, which he had used for more than two decades, contributed to his developing non-Hodgkin's lymphoma. More than 50 U.S. cities and counties have banned the chemical, and the World Health Organization classified it as a "probable human carcinogen" in 2015.

"Bayer firmly believes that the science supports the safety of glyphosate-based herbicides, which are some of the most thoroughly studied products of their kind, and is pleased that the regulators tasked with assessing this extensive body of science continue to reach favorable conclusions," Bayer said in a statement after the EPA's ruling.

InsideEPA

EPA reiterates its view that glyphosate is not carcinogenic

<https://insideepa.com/daily-feed/epa-reiterates-its-view-glyphosate-not-carcinogenic>

Staff

Posted: May 1, 2019

The Trump EPA is reiterating its view that glyphosate, the widely used herbicide, is not carcinogenic, underscoring a long-running dispute with environmentalists and some states, like California, which view the chemical as a carcinogen and potentially bolstering its manufacturer, which is facing billions of dollars in tort claims.

EPA announced April 30 that it is releasing its proposed interim registration review decision for glyphosate, and will take public comment upon it for 60 days once the announcement is published in the *Federal Register*.

"EPA has found no risks to public health from the current registered uses of glyphosate," Administrator Andrew Wheeler says in an April 30 statement. "Today's proposed action includes new management measures that will help farmers use glyphosate in the most effective and efficient way possible, including pollinator protections."

The latest document reiterates EPA's conclusions in its draft human health risk assessment, as well as conclusions in its draft ecological risk assessment that the pesticide poses some risk to birds, mammals and plants. EPA released both assessments for public comment in December 2017.

"If we are going to feed 10 billion people by 2050, we are going to need all the tools at our disposal, which includes the use [of] glyphosate," Agriculture Secretary Sonny Perdue says in EPA's April 30 statement. The Agriculture Department "applauds EPA's proposed registration decision as it is science-based and consistent with the findings of other regulatory authorities that glyphosate does not pose a carcinogenic hazard to humans," he said.

Those draft findings were at odds with California's listing of glyphosate as a carcinogen under its Proposition 65 warning-label law, a finding that California's Supreme Court upheld in its August 2018 rejection of Monsanto Co.'s appeal of the listing. EPA's cancer finding is also contrary to the World Health Organization's International Agency for Research on Cancer (IARC) 2015 monograph that concluded glyphosate probably causes cancer.

"EPA's Pesticide office is out on a limb here--with Monsanto and Bayer and virtually nobody else," Jennifer Sass, Natural Resources Defense Council senior scientist, said in an April 30 statement.

Her comments underscore arguments that the chemical's manufacturer -- Bayer, the successor to Monsanto -- is facing billions of dollars in tort claims from plaintiffs who charge their exposure puts them at risk of cancer.

So far, two U.S. juries have sided with plaintiffs against the company is expecting additional suits from as many as 13,400 plaintiffs in the United States, as well as additional suits in other countries.

As part of the ecological assessment, EPA conducted an evaluation of risk to pollinators and milkweed. "Available data (laboratory and field-based) indicate no risk to pollinators," a pre-publication copy of the *Federal Register* notice states. Still, EPA says it "is proposing spray drift management measures (e.g., release height, droplet size, and wind speed restrictions) to reduce off-site exposure to nontarget wildlife. EPA is also proposing weed resistance management labeling (e.g., information on mode of action, scouting instructions, and reporting instructions for weed resistance) to preserve glyphosate as a valuable tool for growers."

EPA is required by 1996 amendments to the Federal Insecticide, Fungicide and Rodenticide Act to complete registration review of every registered pesticide every 15 years. For glyphosate and 700 other pesticides, that deadline falls on Oct. 1, 2022.

EPA describes glyphosate as "a broad-spectrum systemic herbicide" with registered agricultural uses including "glyphosate-resistant (transgenic) crops such as canola, corn, cotton, soybean, and sugar beet. Non-agricultural use sites include residential areas, turf, rights of ways, and aquatic areas."

Reuters

U.S. environment agency says glyphosate weed killer is not a carcinogen

<https://www.reuters.com/article/us-usa-epa-glyphosate/u-s-environment-agency-says-glyphosate-weed-killer-is-not-a-carcinogen-idUSKCN1S62SU>

Tom Polansek

Posted: 6:23pm, April 30, 2019

CHICAGO (Reuters) - The U.S. Environmental Protection Agency (EPA) said on Tuesday that glyphosate, a chemical in many popular weed killers, is not a carcinogen, contradicting decisions by U.S. juries that found it caused cancer in people.

The EPA's announcement reaffirms its earlier findings about the safety of glyphosate, the key ingredient in Bayer's Roundup. The company faces thousands of lawsuits from Roundup users who allege it caused their cancer.

"EPA continues to find that there are no risks to public health when glyphosate is used in accordance with its current label and that glyphosate is not a carcinogen," the agency said in a statement.

Farmers spray glyphosate, the most widely used herbicide in U.S. agriculture, on fields of soybeans and other crops. Roundup is also used on lawns, golf courses and elsewhere.

The EPA did previously find ecological risks from the chemical and has proposed new measures to protect the environment from glyphosate use by farmers and to reduce the problem of weeds becoming resistant to it.

Bayer said it was pleased the EPA and other regulators who have assessed the science on glyphosate for more than 40 years continue to conclude it is not carcinogenic. "Bayer firmly believes that the science supports the safety of

glyphosate-based herbicides,” it said in a statement. The company has repeatedly denied allegations that glyphosate and Roundup cause cancer.

But critics of the chemical disputed the EPA’s assurances.

“Unfortunately American consumers cannot trust the EPA assessment of glyphosate’s safety,” said Nathan Donley, a senior scientist at the environmental group Center for Biological Diversity.

Monsanto developed Roundup as the first glyphosate-based weed killer, but it is no longer patent-protected and many other versions are available. Bayer bought Monsanto last year for \$63 billion.

The debate over glyphosate’s safety has put a spotlight on regulatory agencies around the world in recent years and, more recently, on U.S. courtrooms.

In 2015, the World Health Organization’s cancer arm classified glyphosate as “probably carcinogenic to humans.” But the EPA in 2017 said a decades-long assessment of glyphosate risks found the chemical was not likely carcinogenic to humans.

In February, analysts at Brazilian health agency Anvisa also determined the weed killer does not cause cancer while recommending limits on exposure.

In the first U.S. Roundup trial, a California man was awarded \$289 million in August 2018 after a state court jury found the weed killer caused his cancer. That award was later reduced to \$78 million and is being appealed by Bayer.

A U.S. jury in March awarded \$80 million to another California man who claimed his use of Roundup caused his cancer.

PFAS

E&E News

Legislation would set PFAS drinking water limit

<https://www.eenews.net/eenewspm/stories/1060247803/search?keyword=EPA>

Ariana Figueroa, George Cahlink

Posted: April 30, 2019

A group of lawmakers is pushing bipartisan legislation to require EPA to set enforceable standards for toxic chemicals in drinking water.

Those chemicals are per- and polyfluoroalkyl substances, known as PFAS, which are found in nonstick household products, shoes and military firefighting foam.

The bill, H.R. 2377, sponsored by Rep. Brendan Boyle (D-Pa.), follows a slew of legislation seeking to address PFAS — from funding research to providing medical resources for people exposed.

Co-sponsor Dan Kildee (D-Mich.), who has been deeply active on the issue, said he and House Speaker Nancy Pelosi (D-Calif.) have talked about possibly including the bill in a spending package.

"I don't discount the possibility of being able to move this and some other PFAS legislation," Kildee said, adding that he's "talked to the speaker about it and she's very open to it."

Kildee said he's hoping to get some type of PFAS legislation passed this year, but for now he's focusing on increasing the amount of money allocated for cleaning up areas where PFAS is found in drinking water.

"President Trump's Environmental Protection Agency is entrusted with keeping our drinking water safe but has delayed protecting our families from toxic PFAS chemicals in drinking water," Kildee said in a statement. "We know that PFAS chemicals are harmful to human health and families deserve safe water from their taps."

Other co-sponsors include Rep. Frank Pallone (D-N.J.), who chairs the Energy and Commerce Committee; Rep. Paul Tonko (D-N.Y.), who chairs the Environment Subcommittee; and Rep. Brian Fitzpatrick (R-Pa.).

People in Fitzpatrick's district are having to "take drastic action" to reduce their exposure to two of the best-known PFAS — PFOA and PFOS — the lawmaker said in a statement today.

"PFAS chemical contamination is a public health crisis and the EPA must act with an urgency that matches the scale of the problem," Fitzpatrick said. "If the EPA won't act, then Congress must take action to protect American communities from these dangerous chemicals."

Other PFAS legislation includes designating the chemical as a hazardous substance and establishing a registry for people exposed to PFAS because of their proximity to a military base.

A Government Accountability Office report found the Defense Department "identified 401 active or closed military installations with known or suspected releases of PFOS or PFOA."

The only PFAS bill without bipartisan support — S. 1023 and its companion H.R. 2102 — would provide hospital care and medical services to veterans and their dependents who were stationed at a military base where they were exposed to PFAS.

InsideEPA

Bipartisan Group Seeks PFAS Rule As Data Shows Contamination Expanding

<https://insideepa.com/daily-news/bipartisan-group-seeks-pfas-rule-data-shows-contamination-expanding>

Suzanne Yohannan

Posted: April 30, 2019

As environmentalists prepare to release new data showing growing contamination from per- and polyfluoroalkyl substances (PFAS) in drinking water, a bipartisan group of House lawmakers has introduced legislation setting a two-year deadline for EPA to regulate the substance, though the bill leaves open key issues the agency would have to address. The Environmental Working Group (EWG), which has long called for a strict drinking water standard for PFAS, says that the group and Northeastern University researchers will release an updated report next week showing that the number of locations with PFAS-contaminated tap water "has soared," far past the 172 locations they identified in 40 states last year.

The data release will come as the House Energy & Commerce Committee -- a key panel with oversight over drinking water and other environmental laws -- is expected in the coming weeks to hold a hearing on PFAS legislation, including a just-introduced bipartisan bill, which is co-sponsored by committee Chairman Frank Pallone, Jr. (D-NJ).

The bill, [H.R. 2377](#), would amend the Safe Drinking Water Act by requiring EPA to publish a maximum contaminant level goal and set a drinking water regulation for "total" PFAS within two years of the bill's passage.

H.R. 2377, along with other related legislation to respond to PFAS contamination, will be considered by the Energy & Commerce Committee in the coming month, Rep. Brendan Boyle (D-PA), a co-sponsor of the bill, says in an April 29 press release.

At press time, Boyle's spokesman did not yet have a schedule for the hearing, and a committee spokesman did not respond to a press query.

But the bill could prompt questions at the hearing as it does not specify which of the thousands of PFAS would be included in the "total" PFAS number, though Boyle's spokesman says the chemicals designated under this term could potentially be specified in the legislation as it moves forward.

It is also not clear what kind of "regulation" the agency would be required to issue as the legislation requires the EPA to craft a "primary drinking water regulation," a term that includes both a health-based maximum contaminant level (MCL) that environmentalists and states have sought and a technology-based treatment standard that environmentalists and others have pursued as an interim step before regulators craft an MCL.

Regardless of the questions the bill may face, key officials have publicly [raised doubts](#) that lawmakers will be able to advance PFAS legislation anytime soon rather than leaving it to EPA.

PFAS are a class of over 4,000 chemicals that are widely used for their nonstick properties. But they have been linked to adverse health effects including certain cancers, ulcerative colitis and other conditions, sparking concern among communities as their discovery in community drinking water supplies has grown.

But many believe EPA has been slow to address the concern. As such, the just-unveiled bill would force EPA's hand after officials in February released a PFAS action plan in which the agency deferred a decision until the end of the year on whether it should write an MCL for two of the thousands of PFAS.

EPA's deferral meant the agency was not committing definitively to issuing such regulation despite heavy pressure from lawmakers, communities around the country and environmentalists to do so.

'Binding Standard'

Pallone, who chairs the committee, calls PFAS contamination "one of the greatest public health crises of our time," and says the legislation "directs EPA to at long last take that crisis seriously, and set a strong, binding nationwide drinking water standard." Along with Pallone and Boyle, the bill's other co-sponsors are Reps. Paul Tonko (D-NY) -- chairman of the environment subcommittee -- Dan Kildee (D-MI) and Brian Fitzpatrick (R-PA).

EWG, in an April 30 press release, applauds the legislation, contending Congress must "force" EPA to act as millions of Americans are being exposed to the chemicals.

An analysis conducted by EWG of federal and state data concluded that more than 1,500 drinking water systems that serve up to 110 million people may be contaminated with the two most common PFAS -- perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS).

EWG, as well as a coalition of community groups from sites around the country and others, contend that EPA should address the chemicals as a class. "A legal limit covering the entire class of chemicals is needed because some have been linked to similar health effects and the vast majority have not been studied for safety," EWG says in its release.

But industry discounts a one-size-fits-all approach, pointing to scientific issues. The American Chemistry Council's Vice President Robert Simon in replying to questions from *Inside EPA* earlier this month noted here are "vast differences within the PFAS family of chemistry." While some chemicals in the family sound similar, he said, PFAS have different characteristics, formulations, intended uses and environmental and health profiles.

"So blanket, one-size-fits-all approaches to regulate all PFAS as a class are not only misleading for the public, they are scientifically-inaccurate," he said. -- *Suzanne Yohannan* (syohannan@iwonews.com)

Toxic Chemicals

Bloomberg Environment

Burning Fluorinated Chemicals May Move Water Problem Into Air

Sylvia Carignan

Posted: 6:01am, May 1, 2019

- Some states, companies opt to incinerate PFAS waste
- EPA considering risks associated with air emissions

Almost three years after the EPA warned the public about two ubiquitous fluorinated chemicals present in drinking water nationwide, regulators are still grappling with how to dispose of the substances before they end up in wells and waterways.

One option is incineration, which 3M Co., the state of Vermont, and the Pentagon have used. But no one knows for sure if it is safe to burn poly- and perfluoroalkyl substances, a family of thousands of heat- and water-resistant chemicals known as PFAS.

"I worry about the life cycle," David Ross, the assistant administrator for water at the Environmental Protection Agency, told the Senate Environment and Public Works Committee at a March 28 hearing. "You take them out of the water supply; are we just transferring the media?"

The chemicals are present in a vast array of consumer and industrial products, including nonstick and stain-resistant coatings in clothing, fast-food wrappers, and carpets. They are also part of some firefighting foams made to put out jet fuel fires because the chemicals are resistant to heat.

The EPA since 2016 has been warning about the health risks to drinking water associated with two of the most well-known and prevalent PFAS compounds, PFOA and PFOS. While states have started to regulate the chemicals, federal regulators have just started to study the broader health effects from the entire class of PFAS chemicals.

Now, regulators are worried about moving the risks associated with these chemicals from water to air.

'All Options Are on the Table'

Tests have found PFOS, PFOA, and other fluorinated chemicals in water supplies and soil samples across the nation.

The question is what to do about them once they are removed from drinking water—absorbed in activated carbon, for instance, or captured in high-pressure membranes—or how to dispose of firefighting foam.

Many state and federal regulators agree incinerating the waste might be the most viable option, but the Conservation Law Foundation has protested the practice.

Map of Water Contamination

--Bloomberg News, EWG

"All options are on the table," said Becky Keogh, president of the Environmental Council of the States and director of Arkansas Department of Environmental Quality. "I believe the question is, 'Can we safely incinerate PFAS compounds?'"

PFAS isn't yet regulated as hazardous waste, and there aren't any air quality standards for regulating PFAS waste incineration and the waste itself, state officials and engineers say.

Current practices incorporate an incinerator permitted to capture acidic hydrogen fluoride, one of the byproducts of incinerating PFAS, said Gale Hoffnagle, senior vice president and technical director for the TRC Environmental Corp., an engineering and environmental consultant for industry. The incinerators don't have to be permitted to just burn hazardous materials, he said.

Incinerating these chemicals takes a considerable amount of energy, from around 300 degrees to more than 1,000 degrees Celsius (about 572 to 1,832 F), according to the [Interstate Technology & Regulatory Council](#), a state-led coalition that works to reduce barriers to the use of innovative technologies for cleaning up air, water, and waste.

Burning for Decades

PFAS chemicals "can be combusted and destroyed, but they have to be burned under fairly strict conditions," said Dan Costa, former national program director in the EPA's Air, Climate, and Energy Research Program.

Some states, the military and at least one company, 3M Co., have chosen to burn waste with at least three of these fluorinated chemicals.

3M, which developed, manufactured, and sold PFOA and PFOS, has been incinerating PFAS-containing waste at its Cottage Grove, Minn., facility since the 1970s, said Laura Opsahl, a spokeswoman for the company.

The military has chosen to dispose of PFAS through incineration at permitted hazardous waste disposal facilities, where air emissions are "strictly controlled," a spokeswoman for the Department of Defense said in an emailed statement. The department defers to the EPA on the risks of incineration, she said.

State Efforts

States, including Massachusetts and Vermont, have gathered firefighting foam and opted to incinerate it. A year ago, Vermont decided to send PFAS-containing foam collected from local fire departments to an incinerator in Ohio for disposal.

When seeking a place that could handle 2,500 gallons of foam, Vermont's Department of Environmental Conservation sought facilities that scrubbed air emissions of resulting harmful chemicals, said Richard Spiese, who heads the department's Waste Management and Prevention Division.

Lab tests indicate that the PFAS should break down in the incineration process, but in the real world it's difficult to tell, Spiese said.

"It's really hard to even sample for," he said.

The Conservation Law Foundation's Vermont chapter questioned the state's decision to incinerate the foam.

"There do not appear to be any studies that show burning PFAS in a hazardous waste incinerator is safe and effective at commercial scales, as opposed to laboratory bench-scale testing," Jen Duggan, director of the organization's Vermont operations, wrote to the state. "No burning of PFAS should occur until incineration technologies are proven safe at a commercial scale."

The foundation also had questions about the Ohio incinerator's qualifications for burning the waste. In the end, Vermont sent the gallons of foam to a Albany, N.Y., incinerator for disposal because the company that owns the Ohio facility was cited for Clean Air Act violations.

'We Certainly Need More Science'

The EPA, mindful of the health risks posed by air pollution, is also considering how to monitor incinerators' stack emissions, or the chemicals released into the air from burning waste.

"Holistically, we certainly need more science across the entire realm of the PFAS world," Ross said.

But the agency doesn't explicitly mention such a risk in its [action plan](#) for dealing with the compounds.

"It is all a balance of risk," said Costa, the former EPA air official. "If you have this stuff and want to get rid of it, how do you want to get rid of it?"

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Bloomberg Environment

Environmental Justice Advisors Push for Superfund Consistency

<https://news.bloombergenvironment.com/environment-and-energy/environmental-justice-advisers-push-for-superfund-consistency>

Sylvia Carignan

Posted: 4:06pm, May 1, 2019

- Unique nature of each Superfund site makes consistent approach hard
- Council's initial recommendations due June 1

The EPA's environmental justice advisers are aligning with corporate interests in a new call for consistency in how the agency approaches the cleanup of toxic waste sites across the country.

The Environmental Protection Agency asked its National Environmental Justice Advisory Council in 2018 for feedback on how the Superfund program could incorporate the needs of disadvantaged communities.

"There needs to be a more consistent application of Superfund policies across regions and across the agency," Charles Chase, council member and professor at the University of Colorado in Denver, said at the council's May 1 meeting in Bethesda, Md. "Communities said, 'Why do they get this, and we don't?'"

One of the challenges to consistent Superfund cleanup actions is the unique nature of individual sites, ranging from harbors to landfills to lakes.

"Each and every Superfund project is separate and unique," Chase said.

Predictable Decisions

Companies responsible for remediating the sites have also called for consistent execution of Superfund policy across regions, including more predictable decisions on cleanup plans.

The council's request aligns with former Administrator Scott Pruitt's Superfund task force recommendations, released in 2017, which promote consistent remedies across sites and consistent application of agency guidance.

As part of the task force's recommendations, the EPA has pushed major decisions on mega-sites, where cleanup costs are expected to exceed \$50 million, to the administrator's desk, taking the responsibility away from the agency's 10 regional offices.

The National Association of Manufacturers was among the interest groups that suggested the mega-sites plan in its public comments to the agency. The association said in 2017 that moving the responsibility from regional offices to the administrator would "promote consistency as well as consistently apply cleanup criteria."

The EPA's questions, which the council is scheduled to answer by June 1, are primarily about how to ensure equitable decision making throughout the cleanup process. The agency is requesting the council's feedback as part of an ongoing revamp of the Superfund program.

The council expects to spend next month assembling its draft recommendations, according to Matthew Tejada, director of the agency's environmental justice office.

Chemical Watch

BASF cautions EPA against releasing REACH studies under TSCA

<https://chemicalwatch.com/77000/basf-cautions-epa-against-releasing-reach-studies-under-tsca>

Kelly Franklin

Posted: May 1, 2019

A European affiliate of BASF has cautioned the US EPA that it risks jeopardising voluntary submission of REACH data to support its TSCA activities if that information cannot be withheld as confidential.

The comments from BASF Colors & Effects GmbH came in a 5 February letter to the EPA, in response to an agency request for the company to substantiate confidentiality claims for 24 studies submitted in support of the ongoing TSCA risk evaluation of pigment violet 29 (see box).

The letter has been publicly released as part of an NGO coalition's Freedom of Information Act (Foia) request, filed last year over concerns that health and safety data underpinning the PV29 evaluation had been withheld as confidential. But in its letter, not only did BASF defend the confidentiality of this data, it also told the EPA that the agency has "a strong policy interest under TSCA in not disclosing the confidential aspects of the studies", or else it risks losing future access to such information.

BASF pointed out that the EPA received full copies of the PV29 studies voluntarily rather than under its TSCA authorities, because the owners of the studies are European companies not subject to the law.

And in many cases, "the only realistic hope" that the agency has of obtaining full copies of studies is through such voluntary submissions.

European study owners, however, will "be very unlikely" to make additional voluntary submissions if the EPA releases the full PV29 studies notwithstanding the confidentiality claims made over them, it said.

"Study owners invest heavily in studies, which have commercial value based in part on their remaining confidential," the company said. Their public disclosure would "destroy part of that commercial value".

"Future voluntary disclosures to EPA of confidential studies, without an assurance that the studies would remain confidential, would mean that European study owners would have a substantial disincentive from submitting additional confidential studies to EPA," it added.

Health and safety data confidentiality

In response to a request for additional comment, a spokesperson for BASF told Chemical Watch the company is "concerned with protecting the kind of trade secret and other confidential information that is important to all research-based companies and [it] made that position known to EPA".

The correspondence, however, has also added a new layer to the ongoing debate about whether the EPA is authorised to withhold as confidential health and safety data under the 2016 reforms to TSCA.

That discussion has thus far largely centred around section 14(b) of TSCA, a provision that environmental advocates have argued blocks the agency from protecting such information.

But in its letter, BASF said that European companies are not subject to TSCA; therefore, this provision does not apply. Instead, it argued for confidentiality protections under traditional Foia law.

In a 14 March response, the EPA told BASF it agreed that the information it claimed as confidential could be exempted from release under Foia. And the following week, it released nine studies that had been sanitised by BASF and 15 others for which the company had dropped its confidentiality claims.

NGOs, however, have protested against the redactions.

PV29 timeline

According to a timeline of events outlined in BASF's letter, the US EPA contacted Dutch company Sun Chemical Group Coöperatief UA in September 2017, requesting its cooperation in providing REACH studies to support its work on pigment violet 29. It did so because an affiliate of that company (Sun Chemical Corporation) manufactures the substance in the US.

After receiving the request, Sun Chemical Group approached BASF Colors & Effects GmbH, a German company that owns the PV29 data (BASF does not produce PV29 in the US or import it in TSCA-reportable quantities). The two companies entered into a data-sharing agreement allowing Sun Chemical Group to disclose the studies to the EPA.

The agreement, for which Sun Chemical Group compensated BASF €84,000 (roughly \$95,600), stipulated that it "make all reasonable efforts to ensure that disclosure of [the studies] ... shall only take place in a form (for example, short summaries where possible) reflecting the minimum information required to be disclosed."

Sun Chemical Group subsequently submitted "complete copies" of the studies to the EPA, and claimed all of the information as confidential business information (CBI).

However, in December 2018, a group of NGOs submitted a Foia request, seeking access to unsanitised copies of the studies. This prompted the EPA to request substantiation from BASF on the CBI claims.

Chemical Watch

Studies identified that support TSCA prioritization candidate selections

<https://chemicalwatch.com/77023/studies-identified-that-support-tsca-prioritisation-candidate-selections?q=EPA>

Staff

Posted: May 1, 2019

The US EPA has published a list of risk assessments, conducted by other federal agencies or countries, that it says supported its selection of 20 candidate substances for designation as high priorities under TSCA.

Formally released on 21 March, the TSCA prioritisation candidates list covers chemicals that the agency has proposed to send into the risk evaluation process at the end of the year. If those designations are finalised, the agency will have three years to complete its reviews, with a possible six month extension.

In its announcement earlier this year, the EPA said it had "surveyed the information and checked quality data elements in a step-wise approach that ensured responsible and timely completion of the process according to TSCA timelines" for the substances.

But Chemical Watch understands that some stakeholders subsequently asked the agency to provide a list of assessments it has for each of the chemicals, so they can better understand and help address potential data gaps.

In a document dated 9 April but posted in the public docket on 25 April, the EPA indicated that it has:

- studies from the US Agency for Toxic Substances and Disease Registry (ATSDR) for 11 of the 20 substances;
- Canadian priority substances list assessment reports and/or state of science reports for seven substances;
- Canadian phthalate substance grouping screening assessments from October 2017, covering five chemicals;
- human health data for eight substances from Australia's National Industrial Chemicals Notification and Assessment Scheme (Nicas); and
- Echa risk assessment reports for seven substances.

The EPA is accepting comments on its slate of prioritisation candidates until 19 June. The agency has said it "intends to update and refine its initial review, based on data sources identified by the public during the comment period."

E&E News

EPA to retain 2003 standards for asphalt roofing companies

<https://www.eenews.net/greenwire/stories/1060252973/search?keyword=EPA>

Sean Reilly

Posted: May 1, 2019

EPA has proposed making no change in hazardous emission limits for companies that manufacture and process asphalt roofing materials.

Under existing 2003 standards, the public health risks are acceptable, the agency said in a draft rule scheduled for publication in tomorrow's *Federal Register*.

The proposal follows a legally required "residual risk and technology review." It applies to plants that manufacture asphalt roofing shingles and related products, and qualify as major sources of toxic emissions.

As of last August, eight facilities fell in that category, which requires adoption of maximum achievable control technology to curb toxic emissions, according to EPA.

Their main emissions include hydrogen chloride, methylene chloride and formaldehyde.

For a hypothetical "most exposed" individual, the review found the cancer risk fell below the one-in-1-million benchmark for both allowable and actual releases.

Under the reviews, required by the Clean Air Act, EPA is supposed to explore advances in pollution control technologies to further cut emissions, as well as whether the original limits present any residual risk to public health.

EPA classifies formaldehyde as a probable human carcinogen. While the review found ways to virtually eliminate releases of formaldehyde from asphalt storage tanks, agency officials concluded the cost was too high to warrant further cutting emission levels.

The review is one in a series of industrial source categories that EPA is carrying out under a court-supervised timetable after failing to meet a Clean Air Act deadline to conduct them within eight years after setting the initial standards.

As E&E News reported earlier this year, other EPA reviews have similarly found no need for changes to long-standing air toxics limits for more than a half-dozen other sources (Greenwire, Jan. 21).

Like them, however, the proposed rule would strike regulatory exemptions for excess emissions from plant startups, shutdowns and malfunctions in keeping with a 2008 court decision. It would also require electronic reporting of test results and add an industry-favored option for monitoring requirements for particulate matter controls.

Under the schedule set in response to a 2017 order by U.S. District Judge Tanya Chutkan of the District of Columbia, EPA intends to complete the review by next March. Once the proposal is published, EPA is allowing 45 days for public comments.

InsideEPA

IG to review toxics office's implementation of TSCA reform

<https://insideepa.com/daily-feed/ig-review-toxics-offices-implementation-tsca-reform>

Staff

Posted: May 1, 2019

EPA's Office of the Inspector General (OIG) announced May 1 that it is kicking off a new review into the agency's implementation of the 2016 reforms to the Toxic Substances Control Act (TSCA) and whether EPA's toxics office has the resources needed to perform its new responsibilities -- an area that has been of question since the law's passage.

“The OIG’s objective is to determine whether the EPA has met Lautenberg Act deadlines, and whether the EPA has the staff, resources and management controls in place to meet future statutory deadlines,” OIG’s May 1 memo states. “The anticipated benefits of this project include determining whether the EPA has the financial capacity and staff necessary to meet all the new statutory deadlines mandated by the Lautenberg Act.”

The memo, addressed to Alexandra Dunn, EPA’s toxics chief, says the review was OIG self-initiated.

President Donald Trump has proposed increases to the toxics office’s budget in each of his budget proposals -- rare bump ups for an EPA program in the Trump administration which has generally sought to slash EPA funding -- in recognition of the resources needed for EPA undertake the many new responsibilities the bipartisan, revised statute requires. It’s successful implementation remains a top priority of the chemical industry.

Meanwhile, OPPT officials have been working for more than a year to reorganize the office to better position it to implement TSCA reform. The most recent plan required hiring new scientific and technical staff to fill a new risk assessment branch. In the meantime, EPA has sought to address its manpower problem by pulling staff from other parts of OPPT, the research office and elsewhere within the agency.

Water

The Guardian

Lifetime of drinking California water could raise cancer risk, study finds

<https://www.theguardian.com/us-news/2019/may/01/california-tap-water-drinking-lifetime-contamination>

Vivian Ho

Posted: 6:00am, May 1, 2019

Drinking California tap water over the course of a lifetime could increase the risk of cancer, according to a study published on Tuesday.

Researchers with the Environmental Working Group, an advocacy non-profit, studied the combined health impacts of contaminants found in 2,737 community water systems throughout California and calculated that prolonged consumption of the contaminated water could cause almost 15,500 new cases of cancer.

The study found traces of arsenic, hexavalent chromium, and disinfection byproducts in the water systems. All of these contaminants are regulated federally and on a state level. Trace amounts of some are legally allowed in the water.

But the study found that a majority of the cancer risk was due to the cumulative effect of these legally allowed amounts. “A large majority of the cancer risk, about 85% of it, is due to the combination of contaminants that are present at legal limits,” explained Tasha Stoiber, an Environmental Working Group senior scientist and the lead author of the report.

“We have found that the majority of that risk was below the federal legal standard,” she told the Guardian. “These cumulative risks are based on health-based standards, not legally enforceable levels. So although the drinking water may get a passing grade, there still may be some health risks associated with it.”

The California environmental protection agency said it was reviewing the study. “Assessing the cumulative risks from multiple contaminants is very complicated and there is no general consensus on the best way to do it,” said Sam Delson, a spokesman with the state office of environmental health hazard assessment.

Stoiber and the other researchers looked at the reported contaminant levels from 2011 to 2015 and added together the averages of all reported contaminants to determine the cumulative risk – a tactic common when it comes to air pollutants, but rarely done when it comes to water, said Ashok Gadgil, a University of California, Berkeley civil and environmental engineering professor who was not involved in the study.

"This is a very interesting and important way to bring the same methodology to water as we developed for air pollutants," Gadgil said. "They're opening up a new way for us to understand."

The researchers believe their cancer risk estimate may be conservative because the mixtures of contaminants may be more toxic than the sum of individual pollutants.

While the study does not map out specific regions or water systems affected by contaminants, Stoiber pointed out that the cumulative effects were a "huge" issue in many smaller water systems in the state. In communities with fewer than 1,000 people, arsenic was the biggest factor in increased cancer risk, she added.

Stoiber hopes that the study will lay the groundwork for approaching water pollutants in a more aggressive manner, instead of setting health limits on just one chemical at a time. "No one is just exposed to one chemical at a time," she said. "Drinking water oftentimes contains multiple contaminants."

"Drinking water standards haven't kept pace with science, and drinking water treatment is expensive," she said. "But we can always do better."

InsideEPA

Drinking water utilities meet with OMB on perchlorate

<https://insideepa.com/daily-feed/drinking-water-utilities-meet-omb-perchlorate>

Staff

Posted: April 30, 2019

A group representing drinking water utilities is scheduled to meet with White House Office of Management and Budget (OMB) officials April 30 to discuss EPA's pending proposed health-based drinking water goal and enforceable standard for the rocket fuel ingredient perchlorate, potentially raising concerns about the agency's methodology.

The American Water Works Association (AWWA), which represents both municipally owned and investor-owned utilities, has repeatedly urged EPA to change its approach for crafting a perchlorate drinking water standard, arguing the agency should use a traditional algebraic formula using a 2007 risk estimate rather than a biologically-based dose-response (BBDR) model as recommended by agency science advisers in 2013.

EPA is under a judicial deadline to propose by May 28 a maximum contaminant level goal (MCLG) and national primary drinking water regulation for perchlorate, and sent its proposal to OMB April 16. OMB's website says AWWA representatives are scheduled to meet with officials April 30 to discuss the proposal.

The fall 2018 Unified Agenda notes EPA's Science Advisory Board (SAB) recommended in 2013 that the agency use models rather than the traditional approach to set the MCLG for the perchlorate regulations. Scientists from EPA and the Food and Drug Administration worked collaboratively to develop BBDR models, and EPA completed peer review of the analysis in March 2018. "The EPA will utilize the best available, peer-reviewed science to inform regulatory decisionmaking for perchlorate," the Unified Agenda says.

But AWWA questions the BBDR model's fitness for use in crafting the standard and funded an analysis by consultants that was recently published in the journal *Regulatory Toxicology and Pharmacology* supporting their argument.

The consultants' analysis says that until more data can be developed to address uncertainties in the current BBDR model, EPA should continue to rely on the 0.7 microgram per kilogram bodyweight per day reference dose the National Academy of Sciences recommended in 2007.

InsideEPA

Bipartisan Group Seeks PFAS Rule As Data Shows Contamination Expanding

Suzanne Yohannan

Posted: April 30, 2019

As environmentalists prepare to release new data showing growing contamination from per- and polyfluoroalkyl substances (PFAS) in drinking water, a bipartisan group of House lawmakers has introduced legislation setting a two-year deadline for EPA to regulate the substance, though the bill leaves open key issues the agency would have to address. The Environmental Working Group (EWG), which has long called for a strict drinking water standard for PFAS, says that the group and Northeastern University researchers will release an updated report next week showing that the number of locations with PFAS-contaminated tap water “has soared,” far past the 172 locations they identified in 40 states last year.

The data release will come as the House Energy & Commerce Committee -- a key panel with oversight over drinking water and other environmental laws -- is expected in the coming weeks to hold a hearing on PFAS legislation, including a just-introduced bipartisan bill, which is co-sponsored by committee Chairman Frank Pallone, Jr. (D-NJ).

The bill, H.R. 2377, would amend the Safe Drinking Water Act by requiring EPA to publish a maximum contaminant level goal and set a drinking water regulation for “total” PFAS within two years of the bill's passage.

H.R. 2377, along with other related legislation to respond to PFAS contamination, will be considered by the Energy & Commerce Committee in the coming month, Rep. Brendan Boyle (D-PA), a co-sponsor of the bill, says in an April 29 press release.

At press time, Boyle's spokesman did not yet have a schedule for the hearing, and a committee spokesman did not respond to a press query.

But the bill could prompt questions at the hearing as it does not specify which of the thousands of PFAS would be included in the “total” PFAS number, though Boyle's spokesman says the chemicals designated under this term could potentially be specified in the legislation as it moves forward.

It is also not clear what kind of “regulation” the agency would be required to issue as the legislation requires the EPA to craft a “primary drinking water regulation,” a term that includes both a health-based maximum contaminant level (MCL) that environmentalists and states have sought and a technology-based treatment standard that environmentalists and others have pursued as an interim step before regulators craft an MCL.

Regardless of the questions the bill may face, key officials have publicly raised doubts that lawmakers will be able to advance PFAS legislation anytime soon rather than leaving it to EPA.

PFAS are a class of over 4,000 chemicals that are widely used for their nonstick properties. But they have been linked to adverse health effects including certain cancers, ulcerative colitis and other conditions, sparking concern among communities as their discovery in community drinking water supplies has grown.

But many believe EPA has been slow to address the concern. As such, the just-unveiled bill would force EPA's hand after officials in February released a PFAS action plan in which the agency deferred a decision until the end of the year on whether it should write an MCL for two of the thousands of PFAS.

EPA's deferral meant the agency was not committing definitively to issuing such regulation despite heavy pressure from lawmakers, communities around the country and environmentalists to do so.

'Binding Standard'

Pallone, who chairs the committee, calls PFAS contamination “one of the greatest public health crises of our time,” and says the legislation “directs EPA to at long last take that crisis seriously, and set a strong, binding nationwide drinking water standard.” Along with Pallone and Boyle, the bill's other co-sponsors are Reps. Paul Tonko (D-NY) -- chairman of the environment subcommittee -- Dan Kildee (D-MI) and Brian Fitzpatrick (R-PA).

EWG, in an April 30 press release, applauds the legislation, contending Congress must “force” EPA to act as millions of Americans are being exposed to the chemicals.

An analysis conducted by EWG of federal and state data concluded that more than 1,500 drinking water systems that serve up to 110 million people may be contaminated with the two most common PFAS -- perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS).

EWG, as well as a coalition of community groups from sites around the country and others, contend that EPA should address the chemicals as a class. “A legal limit covering the entire class of chemicals is needed because some have been linked to similar health effects and the vast majority have not been studied for safety,” EWG says in its release.

But industry discounts a one-size-fits-all approach, pointing to scientific issues. The American Chemistry Council's Vice President Robert Simon in replying to questions from *Inside EPA* earlier this month noted here are “vast differences within the PFAS family of chemistry.” While some chemicals in the family sound similar, he said, PFAS have different characteristics, formulations, intended uses and environmental and health profiles.

“So blanket, one-size-fits-all approaches to regulate all PFAS as a class are not only misleading for the public, they are scientifically-inaccurate,” he said. -- *Suzanne Yohannan* (syohannan@iwpnews.com)